

EXHIBIT A

C O N F I D E N T I A L

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK
 ADV. PRO. NO. 08-01789 (BRL)

-----X
 SECURITIES INVESTOR PROTECTION
 CORPORATION,

Videotaped

Plaintiff-Applicant,
 v.

Rule 2004
 Examination of:

BERNARD L. MADOFF INVESTMENT
 SECURITIES, LLC,
 Defendant.

PETER S. STAMOS

-----X
 In Re:

BERNARD L. MADOFF,

Debtor.
 -----X

TRANSCRIPT of testimony as taken by and before
 NANCY C. BENDISH and MONIQUE VOUTHOURIS, Certified
 Court Reporters, CRRs and Notaries Public of the
 States of New York and New Jersey, at the offices of
 Baker & Hostetler, 45 Rockefeller Plaza, New York,
 New York on Thursday, August 19, 2010, commencing at
 10:17 a.m.

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13 For the Witness

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10

11 ALSO PRESENT:

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12 JARED A. KANOVER, ESQ., Sterling Stamos
13 DANIEL McCLUTCHY, Videographer

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10:17:23 1 THE VIDEOGRAPHER: Good morning. My
10:17:24 2 name is Daniel McClutchy of Bendish Reporting. The
10:17:29 3 date today is August 19th, 2010 and the time is
10:17:33 4 approximately 10:18 a.m. This deposition is being
10:17:38 5 held at the office of Baker & Hostetler located at
10:17:42 6 45 Rockefeller Plaza in New York, New York.
10:17:46 7 The caption of this case is Securities Investor
10:17:51 8 Protection Corporation versus Bernard L. Madoff
10:17:56 9 Securities LLC in the United States Bankruptcy
10:17:59 10 Court, Southern District of New York, Case Number
10:18:02 11 0801789(BRL). The name of the witness is Peter
10:18:09 12 Stamos.

10:18:09 13 At this time the attorneys will
10:18:11 14 identify themselves and the parties they represent.
10:18:14 15 After which our court reporter, Nancy Bendish, will
10:18:18 16 swear in the witness.

10:18:18 17 MR. BOHORQUEZ: Fernando Bohorquez,
10:18:20 18 Baker Hostetler on behalf of the Trustee, Irving
10:18:24 19 Picard. With me here today are Kathryn Zunno and
10:18:27 20 Tom Lucchesi.

10:18:28 21 MR. GOUDISS: Alan Goudiss and Tammy
10:18:29 22 Bieber of Shearman & Sterling LLP for the witness.

10:18:29 23 MR. KANOVER: Jared Kanover of
10:18:45 24 Sterling Stamos, on behalf of...

10:18:45 25

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10:18:48 1 P E T E R S. S T A M O S, sworn.

10:18:54 2 MR. BOHORQUEZ: Before we get
10:18:55 3 started, I have to read something into the record,
10:18:57 4 which is a portion of the Protective Order which was
10:19:00 5 previously provided to your counsel, Mr. Stamos.
10:19:03 6 This is paragraph 12 of the Protective Order entered
10:19:06 7 in this case, and it reads as follows:

10:19:09 8 "Any court reporter who transcribes
10:19:11 9 testimony in this action at a deposition or a
10:19:13 10 bankruptcy Rule 2004 examination shall be provided a
10:19:18 11 copy of this order and shall thereafter ensure that
10:19:22 12 all confidential material is and shall remain
10:19:25 13 confidential and shall not be disclosed except as
10:19:28 14 provided under this order and that copies of any
10:19:31 15 transcript, reporter's notes or any other
10:19:34 16 transcription records of any such testimony shall be
10:19:37 17 retained in absolute confidentiality and safekeeping
10:19:40 18 by such court reporter or shall be delivered to an
10:19:44 19 attorney of record or filed with the court."

10:19:44 20

10:19:44 21 EXAMINATION BY MR. BOHORQUEZ:

10:19:50 22 Q. Now that we've got that out of the
10:19:53 23 way. Good morning, Mr. Stamos. Thank you again for
10:19:57 24 coming today.

10:19:57 25 A. Good morning.

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10:19:58 1 Q. As you know, my name is Fernando
10:20:01 2 Bohorquez. I'm an attorney here at Baker Hostetler.
10:20:01 3 I represent the Trustee, Irving Picard.

10:20:03 4 You are here today pursuant to a
10:20:06 5 Bankruptcy Rule 2004 examination, and the purpose of
10:20:09 6 today's examination is to ask you for information
10:20:12 7 relating to certain events surrounding the Madoff
10:20:15 8 event. Do you understand that?

10:20:19 9 A. Yes.

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Q. So, Mr. Stamos, I understand that you

10:23:29 4

went to -- you got your BA from Stanford; is that

10:23:33 5

right?

10:23:33 6

A. Yes.

10:23:33 7

Q. And when was that?

10:23:35 8

A. I received my BA in 1980.

10:23:38 9

Q. And what did you receive your BA in?

10:23:41 10

A. In political science and economics.

10:23:44 11

Q. And after Stanford, did you receive a

10:23:48 12

JD?

10:23:49 13

A. Yes.

10:23:49 14

Q. That was from Harvard?

10:23:51 15

A. Yes.

10:23:51 16

Q. When was that?

10:23:52 17

A. Received my JD in 1985.

10:23:55 18

Q. Other than Stanford and Harvard, have

10:23:59 19

you received any other degrees from any higher

10:24:03 20

education?

10:24:03 21

A. Yes.

10:24:04 22

Q. What is that?

10:24:05 23

A. A D-Phil from Oxford University.

10:24:08 24

Q. What's a D-Phil?

10:24:10 25

A. Doctor of Philosophy, in politics.

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10:24:13 1 Q. When did you receive a Doctor of
10:24:15 2 Philosophy in politics from Oxford?

10:24:15 3 A. I don't recall the exact year. I
10:24:17 4 think it was 1987 or '88 or '89, in that time frame,
10:24:20 5 but we can provide you with that. It's on my
10:24:23 6 resume.

10:24:24 7 Q. Thank you.
10:24:27 8 What was your first job after
10:24:29 9 receiving your JD from Harvard?

10:24:33 10 A. Upon graduation from Harvard I joined
10:24:36 11 McKenzie & Company.

10:24:38 12 Q. How long were you at McKenzie?

10:24:40 13 A. Over the calendar years 1985 to 1990,
10:24:48 14 but I took a leave of absence to complete my
10:24:52 15 doctoral thesis and submit my thesis at Oxford.

10:24:56 16 Q. And how long did you take a leave of
10:24:57 17 absence for?

10:24:59 18 A. I believe it was approximately nine
10:25:01 19 to 12 months. I don't recall exactly.

10:25:06 20 Q. What was your position at McKenzie
10:25:09 21 when you started?

10:25:10 22 A. Started as an associate.

10:25:11 23 Q. Did that position change over time?

10:25:14 24 A. Yes.

10:25:14 25 Q. What did it change to?

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10:25:16 1 A. Engagement manager.

10:25:20 2 Q. Were there any other positions -- did
10:25:22 3 you hold any other positions at McKenzie other than
10:25:25 4 associate and engagement manager?

10:25:27 5 A. Could you be more specific about
10:25:28 6 positions?

10:25:29 7 Q. Well, did you have a title at
10:25:31 8 McKenzie?

10:25:33 9 A. You know, I don't recall how McKenzie
10:25:35 10 keeps its records of titles. I believe, to the best
10:25:39 11 of my recollection, that McKenzie refers to, your
10:25:42 12 official title is either an associate, a principal
10:25:44 13 or a director, but that they have different roles
10:25:48 14 that you play and so you're referred to as, for
10:25:52 15 example, an engagement manager after two or three
10:25:54 16 years.

10:25:55 17 Q. Were you ever a principal or director
10:25:57 18 of McKenzie?

10:25:58 19 A. No.

10:25:59 20 Q. When you started at McKenzie in 1985
10:26:01 21 as an associate, what were your responsibilities?

10:26:05 22 A. Can you be more specific about what
10:26:08 23 you mean by responsibilities.

10:26:10 24 Q. Let me try to break it down.

10:26:12 25 When you started at McKenzie in 1985,

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10:26:14 1 what did you do? What was your job?

10:26:17 2 A. My job was to do analysis of
10:26:20 3 companies, as part of an engagement team. Served
10:26:26 4 clients both in the public sector and in the private
10:26:30 5 sector. In the public sector and in the private
10:26:32 6 sector.

10:26:33 7 Q. What kind of analysis did you engage
10:26:36 8 in?

10:26:37 9 A. That's a broad question. Would you
10:26:39 10 tell me what you're -- be more specific.

10:26:42 11 Q. It is a broad question. I'd like
10:26:44 12 just a broad answer, so we can just move forward.

10:26:45 13 A. Economic analysis, quantitative
10:26:48 14 analysis, spreadsheets, interviews.

10:26:52 15 Q. And when you would conduct
10:26:54 16 interviews, would you conduct -- would you interview
10:26:57 17 individuals from the various companies?

10:26:59 18 A. Yes.

10:26:59 19 Q. Were these on-site interviews?

10:27:02 20 A. Oftentimes on-site, sometimes by
10:27:04 21 phone.

10:27:05 22 Q. And when you became -- when did you
10:27:07 23 become -- sorry, what was it merging --

10:27:11 24 A. Engagement manager.

10:27:13 25 Q. Thank you. When did you become an

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10:27:15 1 engagement manager at McKenzie?

10:27:19 2 A. After a couple of years. I'm not
10:27:20 3 sure of the exact date.

10:27:21 4 Q. And how did your job change at
10:27:24 5 McKenzie when you became an engagement manager?

10:27:27 6 A. As engagement manager I was
10:27:30 7 responsible for one or more associates and managing
10:27:33 8 their work as well as my own work.

10:27:35 9 Q. When you say their work and your own
10:27:37 10 work, what work are you referring to?

10:27:40 11 A. I'm referring to the analysis that we
10:27:41 12 prepared for recommendations to the client.

10:27:45 13 Q. Were these recommendations to your
10:27:48 14 clients, were these recommendations to invest or not
10:27:53 15 invest in a particular company?

10:27:56 16 A. To be clear, McKenzie & Company is
10:27:58 17 not an investment firm. It's a consulting firm. So
10:28:01 18 our recommendations were consultative in nature.
10:28:05 19 Whether that involved investments or not, I don't
10:28:08 20 recall, but that was not the primary purpose of the
10:28:11 21 analysis, that I remember.

10:28:13 22 Q. What was the primary purpose?

10:28:16 23 A. I primarily focused on healthcare
10:28:18 24 companies.

10:28:20 25 Q. After McKenzie & Company -- after

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10:28:24 1 McKenzie, what was your next job?

10:28:27 2 A. My next job was as managing partner,
10:28:31 3 I'm not sure of the title, but it was managing
10:28:33 4 partner of a group called, now called the Doblin
10:28:37 5 Group.

10:28:37 6 Q. Um-hum.

10:28:39 7 A. It was renamed when they made me
10:28:41 8 managing partner: Doblin, Keeley, Malin, Stamos.

10:28:47 9 Q. And when did you join Doblin?

10:28:51 10 A. I don't recall the exact month, but I
10:28:54 11 believe it was at the beginning of 1990 for about 12
10:28:58 12 months.

10:28:59 13 Q. And what kind of company was Doblin?

10:29:05 14 A. Also a consulting firm, but it
10:29:08 15 focused more on industrial design.

10:29:13 16 Q. Could you be more specific as to
10:29:15 17 what's industrial design?

10:29:17 18 A. An example of industrial design would
10:29:19 19 be the physical configuration of Amoco gas stations.

10:29:29 20 Q. And you would provide consultation on
10:29:31 21 the physical configuration of Amoco gas stations?

10:29:34 22 A. I wouldn't personally do that. I was
10:29:36 23 the manager of a team that would do that.

10:29:40 24 Q. Okay, thank you.

10:29:41 25 Before I forget, what was your thesis

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10:29:43 1 in for your PhD from Oxford -- your doctoral from
10:29:48 2 Oxford?

10:29:49 3 A. Doctoral thesis was, topic was the
10:29:53 4 welfare state and the challenge of economic crisis.

10:30:00 5 Q. Interesting.

10:30:02 6 A. I believe, comma, with a particular
10:30:04 7 attention to the Swedish healthcare system. But it
10:30:08 8 was the welfare state and the challenge of economic
10:30:11 9 crisis.

10:30:12 10 Q. Very relevant topic today, I would
10:30:16 11 think. Thank you.

10:30:18 12 How long were you at Doblin for?

10:30:21 13 A. You know, I think it was 12 months
10:30:22 14 but it might have been a little bit longer.

10:30:24 15 Q. And why did you move from McKenzie to
10:30:28 16 Doblin?

10:30:29 17 A. I was given the opportunity to become
10:30:31 18 a manager at the level of senior executive,
10:30:37 19 equivalent of a co-managing partner of the firm.

10:30:41 20 Q. Understood. And when you left
10:30:47 21 Doblin, after about a year, you said?

10:30:49 22 A. Yes.

10:30:49 23 Q. Where did you go after that?

10:30:51 24 A. My next role was as a -- well, to be
10:30:56 25 precise, there was about a three-month window where

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10:31:01 1 I did transitional work as an independent company
10:31:05 2 and that was in transition to becoming Bill
10:31:10 3 Bradley's chief of staff, which was three to six
10:31:12 4 months later.

10:31:14 5 Q. And what was that independent
10:31:15 6 company?

10:31:16 7 A. It was called, I believe, Integrated
10:31:20 8 Strategies and it worked with my former employer.

10:31:24 9 Q. When you say former employer, was
10:31:26 10 that --

10:31:27 11 A. Doblin.

10:31:27 12 Q. -- Doblin?

10:31:28 13 A. Yes.

10:31:28 14 Q. That was for several months, you
10:31:31 15 said?

10:31:31 16 A. I believe it was three months.

10:31:32 17 Q. What was the nature of that company?

10:31:35 18 A. It was intended to provide work
10:31:37 19 alongside the Doblin Group with -- for the same
10:31:43 20 clients.

10:31:44 21 Q. Industrial design type work?

10:31:48 22 A. Yes. So, in effect the consulting
10:31:50 23 piece of it, the managing consulting piece of it
10:31:53 24 paralleled to the industrial design piece of it.

10:31:57 25 Q. And when did you join Senator

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10:32:00 1 Bradley's staff?

10:32:01 2 A. Within three to six months of my
10:32:03 3 leaving Doblin Group. So, it's somewhere in my
10:32:07 4 resume but I think it was in the middle of 1990.
10:32:09 5 Might have well been like June of 1990.

10:32:12 6 MR. GOUDISS: 1990 or '91?

10:32:14 7 THE WITNESS: I believe it was 19 --
10:32:16 8 oh, I'm sorry, that would have been 1991. That's
10:32:19 9 right, 1991.

10:32:19 10 Q. A ballpark figure is fine.

10:32:25 11 And when you joined Senator Bradley's
10:32:29 12 staff you joined as chief of staff, you said?

10:32:31 13 A. I was chief of staff and also was
10:32:33 14 chief economist.

10:32:37 15 Q. And how long did you work for Senator
10:32:40 16 Bradley?

10:32:41 17 A. All the way through the election of
10:32:44 18 President Bill Clinton. So that would have been the
10:32:46 19 end of '92, I believe. December of '92.

10:32:51 20 Q. And where did you work after that?

10:32:56 21 A. At Booz Allen Healthcare.

10:32:58 22 Q. Why did you leave Senator Bradley's
10:33:01 23 staff to go to Booz Allen?

10:33:05 24 A. Primary reason for leaving Senator
10:33:09 25 Bradley's staff was that he was not going to be

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10:33:14 1 running for president. President Clinton was
10:33:17 2 elected and so I asked his permission to go back to
10:33:20 3 the private sector.

10:33:21 4 Q. And why did you go to Booz Allen?

10:33:25 5 A. Because they had a very reputable
10:33:29 6 healthcare practice and that was an area of
10:33:31 7 expertise that I had developed at McKenzie.

10:33:33 8 Q. When you joined Booz Allen, what was
10:33:36 9 your position?

10:33:38 10 A. I was a principal.

10:33:39 11 Q. And, generally speaking, what were
10:33:42 12 your responsibilities as a principal at Booz Allen?

10:33:46 13 A. Generally speaking, similar to the
10:33:47 14 responsibilities I had at McKenzie as an engagement
10:33:53 15 manager but at one level higher, larger teams, but
10:33:59 16 the same sort of analysis.

10:34:00 17 Q. By same sort of analysis, what are
10:34:03 18 you referring to?

10:34:04 19 A. The primary focus of my work was the
10:34:09 20 design and implementation of work called integrated
10:34:13 21 healthcare delivery systems, which was the topic of
10:34:15 22 my doctoral thesis.

10:34:17 23 Q. What are integrated healthcare
10:34:20 24 delivery systems?

10:34:21 25 A. Generally speaking?

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10:34:22 1

Q. Yes.

10:34:23 2

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A. Generally speaking, they are the bringing together of physician groups, hospital groups and/or payor groups into one system. So it can be as simple as the merger of two or three hospitals, can be as complicated as the merger of hospitals with physician groups with payor insurance company.

Q. Is that the type of work you did for Long Island Jewish Health System?

A. Precisely.

Q. Okay. We'll get to that in just a minute. As you can tell, I'm doing this chronologically, just to get an understanding of your background.

A. And I apologize if the dates are a little off, but it's on my bio and then also I think the documents that we...

Q. Okay. I appreciate that.

And how long were you at Booz Allen for?

A. As part of the organization I believe it was about a year. And then I became an independent contractor with them for about six months.

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10:35:21 1 Q. And when did you form Stamos
10:35:25 2 Associates?

10:35:25 3 A. In that time frame.

10:35:27 4 Q. Is that the independent contractor
10:35:29 5 you were referring to?

10:35:30 6 A. Yes.

10:35:30 7 Q. So you formed Stamos Associates
10:35:33 8 around 1994 or '95?

10:35:36 9 A. I believe it was '94. Or could have
10:35:41 10 been, it could have been -- I don't remember the
10:35:43 11 exact dates. It was either '93 or '94. I believe
10:35:48 12 it was '94.

10:35:49 13 Q. And what was the nature of Stamos
10:35:51 14 Associates' business?

10:35:52 15 A. Healthcare consulting.

10:35:54 16 Q. And how many employees did you have?

10:35:57 17 A. Did we have at what time frame?

10:36:00 18 Q. Let's say when you started.

10:36:02 19 A. When we started, initially it was
10:36:03 20 just myself, an independent contractor, working with
10:36:07 21 associates and other former colleagues from Booz
10:36:12 22 Allen.

10:36:12 23 Q. And why did you decide to become an
10:36:14 24 independent contractor?

10:36:16 25 A. I was given an offer to join the

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10:36:19 1 faculty of Stanford as part of -- as the director of
10:36:23 2 comparative healthcare research project. And as an
10:36:27 3 independent contractor I could be both on the
10:36:30 4 faculty and continue to do consulting work.

10:36:32 5 Q. Are you still doing that work for
10:36:35 6 Stanford?

10:36:37 7 A. No.

10:36:37 8 Q. Are you on any Stanford boards or
10:36:40 9 anything along those lines?

10:36:41 10 A. Yes.

10:36:42 11 Q. What boards are you on at Stanford?

10:36:44 12 A. I'm on the board of Stanford
10:36:47 13 University Hospital and Clinics and I chair the
10:36:49 14 investment committee of that group. And I'm on the
10:36:52 15 finance committee as well.

10:36:54 16 Q. How long have you been the chair of
10:36:56 17 the investment committee?

10:36:58 18 A. For several years. I don't remember
10:36:59 19 when it officially began.

10:37:01 20 Q. And what are your responsibilities as
10:37:06 21 chair of the investment committee?

10:37:07 22 A. Could you be more specific about
10:37:09 23 responsibilities or give me a little bit more
10:37:12 24 direction as to what you're asking?

10:37:15 25 Q. Well, not really. I'm just asking a

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10:37:18 1 general question. As chair of this investment
10:37:20 2 committee, what are your responsibilities, what are
10:37:22 3 your obligations, what's expected of you?

10:37:25 4 A. Okay. So the committee is -- my
10:37:28 5 general responsibilities is to chair a meeting of
10:37:31 6 members of the committee four times a year and to
10:37:34 7 provide guidance as to how to allocate capital that
10:37:40 8 the hospital has across various asset classes,
10:37:45 9 including substantial allocation to Stanford
10:37:50 10 University, what's called the Stanford University
10:37:53 11 merged pool of capital which invests across multiple
10:37:57 12 asset classes. It's about 700 million to a billion
10:38:02 13 dollars of capital.

10:38:04 14 Q. And you can't recall how long you've
10:38:06 15 been chair of that investment committee?

10:38:08 16 A. It's been several years. I just
10:38:11 17 don't recall when it officially started. I've been
10:38:14 18 on the board for I believe eight or nine years.

10:38:17 19 Q. Just so I get a rough time frame, did
10:38:19 20 you become chair of the investment committee before
10:38:22 21 or after you formed Sterling Stamos?

10:38:25 22 A. After forming Sterling Stamos.

10:38:28 23 Q. That was in June of '02, right?

10:38:30 24 A. That was June of '02.

10:38:32 25 Q. Okay. So it was after June of '02

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10:38:34 1 you became chair?

10:38:35 2 A. Yes. I believe it was two or three
10:38:36 3 years after that.

10:38:36 4 Q. Okay.

10:38:37 5 A. I think it was in the '04 to '06 time
10:38:40 6 frame, but I don't recall exactly when.

10:38:42 7 Q. Do you know if -- how many members
10:38:43 8 are on the investment committee?

10:38:46 9 A. I don't have the exact number, I
10:38:48 10 think it's somewhere between four to six members,
10:38:50 11 official members.

10:38:51 12 Q. Do you know if any of the members of
10:38:53 13 the investment committee had any investments in
10:38:55 14 Madoff?

10:38:56 15 A. I wouldn't know that. I don't know
10:38:58 16 what their personal investments are.

10:39:00 17 Q. Did the topic of Madoff ever come up
10:39:03 18 in any of these investment committee meetings,
10:39:06 19 quarterly meetings that you hold?

10:39:09 20 A. Can you be more specific about time
10:39:13 21 frame.

10:39:13 22 Q. Did the topic of Madoff ever come up
10:39:15 23 at any investment committee that you chaired?

10:39:19 24 A. What I recall is the topic of Madoff
10:39:23 25 coming up after it was announced that -- after the

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10:39:28 1 fraud was announced, coming up that he was arrested.
10:39:32 2 I recall that topic coming up that day. I believe,
10:39:37 3 I think we had a committee meeting either that day
10:39:39 4 or the day after. I think we had a committee
10:39:41 5 meeting the day after.

10:39:42 6 Q. Okay. So the fraud was revealed, so
10:39:45 7 to speak, or he was arrested on December 11th, 2008,
10:39:51 8 right?

10:39:51 9 A. That is...

10:39:52 10 Q. I can represent to you.

10:39:52 11 A. Yes, yes.

10:39:53 12 Q. Trust me, I know.

10:39:55 13 A. If that was -- as I remember, the
10:39:56 14 committee meeting was a Friday. So if that was a
10:39:59 15 Thursday, that Friday.

10:40:01 16 Q. You're absolutely right. Your memory
10:40:01 17 is very good on that.

10:40:02 18 So that was a Thursday and you had a
10:40:04 19 meeting the following Friday with the investment
10:40:07 20 committee? The next Friday, the following day.

10:40:10 21 A. The next day. Well, to be specific,
10:40:11 22 that Friday we had our set of regularly scheduled
10:40:15 23 meetings, which is the investment committee followed
10:40:18 24 by the finance committee followed by the board.

10:40:21 25 Q. What was discussed at the investment

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10:40:24 1 committee meeting that Friday concerning Madoff?

10:40:27 2 A. To be clear, I don't recall it being
10:40:29 3 raised as part of the discussions of the committee.
10:40:31 4 I believe I recall, in fact I'm certain I recall, it
10:40:35 5 being a topic in between meetings and I received an
10:40:39 6 email from one of my committee members about that
10:40:42 7 that day.

10:40:43 8 Q. Is that how you found out about the
10:40:47 9 Madoff fraud?

10:40:48 10 A. No. I heard about the Madoff fraud
10:40:50 11 the day before.

10:40:53 12 Q. With respect to these discussions on
10:40:55 13 that Friday, the 12th, December 12th, what was the
10:41:00 14 nature of those discussions?

10:41:03 15 A. If I expressed that there were
10:41:06 16 discussions, I didn't intend to express that. I
10:41:09 17 don't think there were discussions. I remember it
10:41:10 18 being, the topic being raised, one time specifically
10:41:15 19 I can remember it being raised.

10:41:16 20 Q. And who raised the Madoff topic?

10:41:19 21 A. John Scully.

10:41:20 22 Q. And who is John Scully?

10:41:21 23 A. John Scully is the chairman of the
10:41:23 24 finance committee and is on the investment committee
10:41:25 25 with me.

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10:41:26 1

Q. What did Mr. Scully say?

10:41:28 2

A. I don't recall whether we actually had a conversation. What I do recall is receiving an email from him.

10:41:31 4

10:41:33 5

Q. So he sent you an email on December 12th?

10:41:37 6

10:41:38 7

A. Yes. In the middle of the committee meeting. One of the committee meetings.

10:41:40 8

10:41:43 9

Q. And what did the email say?

10:41:45 10

A. I believe you have that. I submitted it. From what I recall it was -- it had something to do with it being reported in the press that either Sterling Equities or Sterling Stamos had made investments with Madoff.

10:41:47 11

10:41:55 12

10:41:59 13

10:42:03 14

10:42:05 15

Q. And what was your response to Mr. Scully's email?

10:42:07 16

10:42:10 17

A. I don't recall the exact response. Again, I think I've submitted it. In fact, I'm sure it's in the documents. I actually don't recall, I don't recall what I responded, but it's in the documents. I know what I would have intended to say, which is that it was a mistake.

10:42:12 18

10:42:15 19

10:42:22 20

10:42:24 21

10:42:26 22

10:42:29 23

Q. And did you express that to him in person at one of these meetings? On that Friday.

10:42:32 24

10:42:37 25

A. I don't recall the exact conversation

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10:42:38 1 with Mr. Scully, but I do recall the nature of his
10:42:42 2 concern because he knows the Wilpons well.

10:42:48 3 Q. How did Mr. Scully know the Wilpons?

10:42:51 4 A. He is one of the owners of the New
10:42:53 5 York -- of the San Fransisco Giants and Wilpons, as
10:42:56 6 you know, are owners of the New York Mets.

10:42:58 7 Q. So when you're referring to
10:43:00 8 Mr. Scully knows the Wilpons, are you referring to
10:43:04 9 Fred Wilpon?

10:43:05 10 A. He knows both Fred Wilpon and Richard
10:43:08 11 Wilpon.

10:43:09 12 Q. Do you know if Mr. Scully and Fred
10:43:12 13 Wilpon ever had any discussions concerning
10:43:17 14 Mr. Wilpon's Madoff investments?

10:43:19 15 A. I don't have any knowledge of those
10:43:22 16 conversations.

10:43:22 17 Q. Do you know if Mr. Scully had any
10:43:25 18 investments with Madoff?

10:43:26 19 A. I don't know if he had the
10:43:27 20 investments with Mr. Madoff. He may have but that
10:43:31 21 would not be part of my knowledge.

10:43:32 22

10:43:36 23

REDACTED

10:43:37 24

10:43:40 25

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10:45:00 12

Other than the email you received from Mr. Scully and the conversation you had with him that day on December 12th, did you have any other conversations or receive any other emails from anyone on the investment committee or finance committee that day?

10:45:04 13

10:45:06 14

10:45:11 15

10:45:13 16

10:45:16 17

A. I don't recall any other emails from any other committee members that day. From any other committee members that day. It is possible that I submitted all the emails, but I don't recall seeing that.

10:45:17 18

10:45:19 19

10:45:24 20

10:45:26 21

10:45:28 22

Q. And other than your conversation with Mr. Scully on February -- December 12th, did you have any other discussions or conversations with anyone from the investment committee or the finance committee that day?

10:45:32 23

10:45:33 24

10:45:37 25

A. I don't recall any specific conversations but I would, as I think about that day, my sense is that I must have had, I would

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10:45:40 1 assume I had some conversations because it was a
10:45:42 2 concern for everybody. People were talking about
10:45:45 3 it.

10:45:45 4 Q. And why was there a concern for the
10:45:48 5 members of the Stanford investment committee and
10:45:52 6 finance committees?

10:45:53 7 A. I think it was a concern for them the
10:45:55 8 same way it was a concern for anybody who was
10:45:58 9 concerned about such a difficult event.

10:46:04 10 Q. Just generally speaking, the nature
10:46:07 11 of the massive fraud, is that what you're referring
10:46:10 12 to?

10:46:10 13 A. Yes.

10:46:11 14 Q. Anything else?

10:46:13 15 A. No, no -- well, I think the only
10:46:15 16 other part was the conversation I had with John
10:46:18 17 Scully, which was his concern about his friends the
10:46:22 18 Wilpons and his concern about whether we also had
10:46:25 19 exposure.

10:46:25 20 Q. So did anyone else that day raise the
10:46:29 21 Wilpons' investments with Madoff with you that day?

10:46:34 22 A. It's possible that they did. It was
10:46:36 23 a very busy day. I don't recall the specific
10:46:38 24 conversations of that day. But I know that several
10:46:42 25 of the committee members knew about my relationship

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10:46:45 1 with the Wilpons and the Katzes, so it's very
10:46:48 2 possible that I had other conversations. If you
10:46:51 3 spoke to them they might recall, but I don't. I
10:46:55 4 don't recall any specific conversations.

10:46:55 5 Q. Who are the other members of the
10:46:58 6 investment committee?

10:46:59 7 A. I don't recall all of them by name,
10:47:00 8 but I'll tell you the ones I can remember.

10:47:02 9 Q. That's fine.

10:47:03 10 MR. GOUDISS: This is as of December
10:47:05 11 2008?

10:47:05 12 MR. BOHORQUEZ: Correct.

10:47:06 13 A. As of December 2008 I recall that
10:47:08 14 John Friedrich was a member of that committee.

10:47:11 15 Q. Who is John Friedrich?

10:47:14 16 A. John Friedrich is a member of the
10:47:17 17 board and I believe he is the founding partner of a
10:47:19 18 venture capital group called, I believe it's called
10:47:24 19 Bay, B-a-y, Partners or Bay Investors. Also believe
10:47:32 20 he's the founding partner of a law firm called
10:47:36 21 Friedrich and something.

10:47:37 22 Q. Anyone else, do you recall?

10:47:39 23 A. I don't recall who the members were
10:47:39 24 on that day. There are other committee members and
10:47:42 25 I could get that list for you, because the committee

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10:47:44 1 has changed since that day, so I don't recall who
10:47:48 2 the other members' names are.

10:47:50 3 Q. To the best of your recollection who
10:47:51 4 were the committee members in 2008?

10:47:53 5 A. 2008, the name's escaping me but the
10:48:05 6 founder of Netscape is currently a member and I
10:48:08 7 believe he was a member at that time.

10:48:09 8 Q. What's his name?

10:48:11 9 A. I don't recall.

10:48:14 10 Q. Could probably Google that pretty
10:48:18 11 quickly.

10:48:18 12 A. We could Google that. He's one of
10:48:19 13 the co-founders of Netscape. Oh, Marc Andreessen.
10:48:24 14 Marc Andreessen. He's a member of that committee.

10:48:28 15 Q. Just so we're clear, when you say
10:48:31 16 that committee, you're talking about the investment
10:48:32 17 committee or the finance committee?

10:48:33 18 A. Investment committee. The finance
10:48:35 19 committee is quite large, so the investment
10:48:37 20 committee.

10:48:37 21 Q. Okay, all right. Anyone else?

10:48:38 22 A. Yeah. There are other members I'm
10:48:39 23 just blanking on their names.

10:48:41 24 Q. Okay, that's fine.

10:48:42 25 A. But we can give you the list of names

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10:48:44 1 of the committee members.

10:48:45 2 Q. I appreciate that.

10:48:47 3 I want to back up to SAI. And I
10:48:59 4 believe you sold SAI in around 1997; is that right?

10:49:03 5 A. That date I do know. It was June
10:49:09 6 17th, 1997. The reason I know that date, it's my
10:49:09 7 wife's birthday.

10:49:09 8 Q. How fortuitous.

10:49:12 9 A. That was the date that the
10:49:14 10 transaction was closed, June 17th, 1997.

10:49:18 11 Q. And why did you sell SAI?

10:49:21 12 A. Because I was given an offer from
10:49:23 13 Perot Systems that was quite attractive.

10:49:28 14 Q. And after you sold SAI, what did you
10:49:32 15 do next?

10:49:33 16 A. I continued to be employed at SAI for
10:49:37 17 two or three years. Initially on a full-time basis
10:49:40 18 and eventually on a part-time basis.

10:49:44 19 Q. And you formed, you and the Sterling
10:49:49 20 partners formed Sterling Stamos in June of '02,
10:49:52 21 correct?

10:49:53 22 A. Yes. That I believe was also
10:49:54 23 formally incorporated on June 17th, 2002, five years
10:49:59 24 later. And I believe we opened for business on --
10:50:03 25 with our own capital on July 1st, 2002.

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10:50:10 1 Q. Did you have any other jobs between
10:50:13 2 SAI and Sterling Stamos?

10:50:15 3 A. Yes.

10:50:16 4 Q. What, could you tell me what those
10:50:19 5 were?

10:50:19 6 A. Yes. I served as an advisor
10:50:21 7 consultant to a company called Channel Point.

10:50:25 8 Q. What is Channel Point?

10:50:26 9 A. Channel Point, I don't know if it's
10:50:29 10 still in existence, but at the time it was a
10:50:31 11 business-to-business Internet start-up company.

10:50:33 12 Q. And how long did you work for Channel
10:50:37 13 Point?

10:50:37 14 A. I don't recall exactly, but
10:50:39 15 approximately 12 to 18 months.

10:50:42 16 Q. And do you recall the time frame?

10:50:45 17 A. Roughly speaking, as I was completing
10:50:50 18 my work with Perot Systems on a part-time basis, I
10:50:54 19 believe I rotated initially to a part-time basis and
10:50:57 20 eventually to a, closer to a full-time basis as a
10:51:00 21 consulting advisor. So it would have been '99 or
10:51:05 22 2000. Could have been as early as '98. I don't
10:51:08 23 recall.

10:51:09 24 Q. Okay. That's fine.

10:51:10 25 What did you do after Channel Point?

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10:51:12 1 A. After Channel Point I took some time
10:51:15 2 off and served on at least two advisory boards that
10:51:22 3 I can recall.

10:51:24 4 Q. And what were those?

10:51:25 5 A. I served as an advisor to -- on the
10:51:28 6 advisory board of a group called grassroots.com.

10:51:34 7 Q. Is that another B to B?

10:51:37 8 A. I don't think it was described as a
10:51:39 9 B to B, but it was in that same sort of technology.
10:51:44 10 It was a political technology company. And another
10:51:49 11 company I served on the advisory board of, and I
10:51:54 12 don't recall, it may actually have been on the -- I
10:51:55 13 think it was just the advisory board but I may
10:51:58 14 actually have been on the board of a healthcare
10:52:01 15 company, whose name escapes me, but I think it's
10:52:04 16 somewhere in my bio. I could find that for you.

10:52:12 17 Q. While we're on the subject of
10:52:13 18 advisory boards, do you currently serve on the
10:52:16 19 advisory board for major league baseball?

10:52:16 20 A. Yes. I serve as the chairman of the
10:52:18 21 advisory board, the investment advisory board for
10:52:21 22 major league baseball.

10:52:23 23 Q. How long have you been the chairman
10:52:25 24 of that board?

10:52:26 25 A. Again, for several years. I don't

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10:52:27 1 recall the exact start-up, the date of that, but I
10:52:31 2 was the founding chairman. So, more than two, I
10:52:35 3 think less than five years. Somewhere in the three
10:52:38 4 to five-year range. Actually, I can think more
10:52:44 5 specifically about the initial investments. I think
10:52:46 6 the first investment of this group was in 2007. So
10:52:52 7 I think the group was formed in 2007.

10:52:55 8 Q. So to be specific, the first
10:52:57 9 investment of the advisory board was in 2007?

10:53:01 10 A. The advisory board was -- I misspoke.
10:53:04 11 The first investment of the major league baseball
10:53:09 12 with the consultation of the advisory board was made
10:53:12 13 I believe in 2007. They had made prior --
10:53:15 14 investments prior to the formation of the advisory
10:53:18 15 board.

10:53:19 16 Q. And, generally speaking, what are
10:53:22 17 your obligations and responsibilities as chair of
10:53:26 18 the investment advisory board for MLB?

10:53:28 19 A. Generally speaking, my responsibility
10:53:31 20 is to gather information from other members of the
10:53:34 21 advisory board and to provide that information about
10:53:36 22 the economy, markets and investment opportunities to
10:53:41 23 the investment committee of major league baseball,
10:53:45 24 who ultimately makes the investment decisions.

10:53:48 25 Q. In the investment advisory board, how

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10:53:51 1 often do you meet?

10:53:54 2 A. We meet periodically, not on a
10:53:57 3 defined basis, but we try to have at least one
10:53:59 4 meeting per year. Sometimes we meet two, three or
10:54:04 5 four times per year. And then in between I have
10:54:07 6 phone call conversations with members of the
10:54:09 7 advisory board.

10:54:11 8 Q. How large is the advisory board for
10:54:15 9 MLB?

10:54:16 10 A. I can tell you its current
10:54:19 11 membership if that's -- yes, I think it's four, five
10:54:22 12 members, but to tell you the number I have to think
10:54:25 13 of the names. About four or five members.

10:54:27 14 Q. Okay. Could you tell me who they
10:54:29 15 are?

10:54:29 16 A. Yes. John Powers of Stanford, Scott
10:54:34 17 Malpass of Notre Dame, Abby Joseph Cohen of Goldman
10:54:40 18 Sachs, Myron Scholes.

10:54:42 19 Q. The Nobel prize winner?

10:54:45 20 A. That's correct.

10:54:47 21 Those are the four current members,
10:54:49 22 in addition to myself, that I recall. In addition,
10:54:55 23 there is an advisor to the advisory board whose name
10:54:58 24 is David Swenson of Yale. Former member of the
10:55:03 25 advisory board was Ezra Merkin. No longer a member.

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10:55:09 1 Q. And how long was Mr. Merkin a member
10:55:12 2 of the advisory board?

10:55:14 3 A. I believe from the inception of the
10:55:16 4 advisory board all the way until either late 2008 or
10:55:24 5 the early part of 2009.

10:55:27 6 Q. Was Mr. Merkin's departure from the
10:55:31 7 advisory board in any way related to the
10:55:35 8 investigation of Mr. Merkin in connection with
10:55:39 9 Madoff?

10:55:40 10 A. I would have to say that expression
10:55:44 11 "in any way," the answer is yes.

10:55:46 12 Q. Can you please explain that answer.

10:55:49 13 A. Yes. When Mr. Merkin's involvement
10:55:55 14 with Mr. Madoff was disclosed, to the shock and
10:56:00 15 surprise of many of us, myself included, I asked the
10:56:07 16 chief financial officer of major league baseball to
10:56:11 17 ask for his resignation.

10:56:15 18 Q. How do you know Ezra Merkin?

10:56:18 19 A. I was introduced to Mr. Merkin by
10:56:20 20 Mr. Saul Katz.

10:56:21 21 Q. And when did Saul Katz introduce you
10:56:24 22 to Ezra Merkin?

10:56:26 23 A. Before the formation of our firm
10:56:31 24 in --

10:56:31 25 Q. By "our firm" you're referring to

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10:56:33 1 Sterling Stamos?

10:56:34 2 A. Sterling Stamos, which at the time
10:56:36 3 was called SP Capital. Stamos Partners Capital
10:56:40 4 Management, I believe it was. It would have been in
10:56:42 5 the April, May, June period of time before our first
10:56:47 6 investments were made on July 1st.

10:56:50 7 Q. This is 2002?

10:56:52 8 A. 2002.

10:56:54 9 Q. Could you describe to me the first
10:56:56 10 meeting that you had with -- actually, let me back
10:56:59 11 up.

10:56:59 12 How did Mr. Saul Katz introduce you
10:57:02 13 to Ezra Merkin?

10:57:04 14 A. How or why?

10:57:07 15 Q. We can start with -- we'll do both
10:57:09 16 but let's start with how.

10:57:11 17 A. He introduced me orally saying this
10:57:15 18 is somebody I would like you to meet.

10:57:17 19 Q. So this was in person?

10:57:18 20 A. It was either in person or by phone.
10:57:20 21 I don't recall.

10:57:21 22 Q. And why did Mr. Katz introduce you to
10:57:24 23 Mr. Merkin?

10:57:25 24 A. Mr. Merkin was one of, I would say
10:57:28 25 several managers that Mr. Katz wanted me to meet,

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10:57:34 1 who he believed would either, A, give me a good
10:57:41 2 introduction to other managers or, B, possibly be
10:57:47 3 one of the managers that we could invest in. And I
10:57:50 4 believe Mr. Katz said this is also somebody that you
10:57:53 5 could learn from.

10:57:55 6 Q. And from, could you describe the
10:57:59 7 relationship that you had with Mr. Merkin from
10:58:02 8 introduction in April of '02 until December of 2008?

10:58:06 9 A. Could I ask you to be more specific
10:58:08 10 as to time frame, because there's a lot of -- maybe
10:58:11 11 just do it in segments.

10:58:13 12 Q. Okay. Let's start with the beginning
10:58:17 13 of the relationship with Mr. Merkin; can you please
10:58:21 14 describe the nature of that relationship.

10:58:22 15 A. Sure. The initial nature of the
10:58:25 16 relationship was to meet him about the possibility
10:58:27 17 of, as I said, either, A, learning from him of
10:58:31 18 managers that we should invest in. Because he was a
10:58:34 19 very reputable person and knew a lot about managers.
10:58:38 20 And/or, B, to actually invest in his funds. And in
10:58:42 21 the nature of that first set of meetings, some of
10:58:45 22 which were held by me, some by others, we made a
10:58:49 23 decision to invest in I believe two or three of his
10:58:53 24 funds.

10:58:53 25 Q. And those two or three funds were

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10:58:56 1

Gabriel?

10:58:56 2

A. I believe it was Gabriel, Ascot and

10:59:00 3

Long Horizons.

10:59:01 4

Q. Sorry, what was the last one?

10:59:04 5

A. Long Horizons.

10:59:05 6

Q. When Mr. Saul Katz -- part of the

10:59:08 7

reason why Mr. Saul Katz introduced you to

10:59:11 8

Mr. Merkin you said was because he believed you

10:59:13 9

could learn from him; is that right?

10:59:16 10

A. (Witness nods.)

10:59:16 11

Q. Over the course of your relationship

10:59:18 12

from '02 to '08, did you -- what did you learn from

10:59:21 13

Mr. Merkin?

10:59:22 14

A. You'd have to be more specific about

10:59:24 15

that. I learned a lot things. I learned about

10:59:29 16

managers, for example.

10:59:30 17

Q. What did you learn about managers

10:59:32 18

from Mr. Merkin?

10:59:32 19

A. He introduced me to a number of

10:59:34 20

highly reputable managers that were either hard to

10:59:38 21

get into or, in some cases, closed managers.

10:59:43 22

Q. And what managers were those, do you

10:59:46 23

recall?

10:59:47 24

A. I recall some of them. I recall him

10:59:49 25

introducing us to the manager called TPG-Axon, as an

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10:59:58 1

example.

11:00:00 2

Q. Anyone else?

11:00:01 3

A. There are others that I recall from

11:00:02 4

my emails, but -- introduced us to Sirbius, as

11:00:12 5

another example.

11:00:13 6

Q. Did you ever seek Mr. Merkin's advice

11:00:16 7

or counsel on any matters?

11:00:18 8

A. Yes.

11:00:18 9

Q. From '02 to '08?

11:00:21 10

A. Yes.

11:00:21 11

Q. On what topics would you seek

11:00:23 12

Mr. Merkin's -- or on what topics did you seek Mr.

11:00:24 13

Merkin's advice?

11:00:25 14

A. I don't recall specific conversations

11:00:26 15

but, generally speaking, I would talk to him about

11:00:29 16

his view of the economy, investment opportunities

11:00:36 17

and, more specifically, about what managers he had

11:00:40 18

come across in his experience that we should

11:00:44 19

consider investing in ourselves, in addition to his

11:00:47 20

own funds.

11:00:48 21

Q. Anything else you recall?

11:00:50 22

A. Anything else?

11:00:51 23

Q. Other than what you just -- let me

11:00:54 24

back up.

11:00:54 25

I asked you what were the topics that

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11:00:57 1 you sought Mr. Merkin's advice and counsel, and you
11:01:00 2 just went through a list. Were there any other
11:01:02 3 issues?

11:01:03 4 A. This was over the course of many
11:01:05 5 years. I can't recall all of them but I recall
11:01:07 6 generally speaking having a number of conversations
11:01:09 7 with him about his own investments and understanding
11:01:12 8 the nature of those investments and what the
11:01:15 9 prospects were for their returns, sources were for
11:01:19 10 their returns, and the like.

11:01:21 11 Q. And did you ever seek his advice or
11:01:23 12 counsel with respect to any government regulations?

11:01:30 13 A. I recall having conversations with
11:01:31 14 him about pending government regulations. I don't
11:01:34 15 recall that I initiated the request or whether he
11:01:38 16 initiated the request or whether Mr. Katz initiated
11:01:41 17 the request. But I recall there were conversations
11:01:45 18 and emails.

11:01:45 19 Q. What were the topics of those
11:01:48 20 discussions about --

11:01:48 21 A. The topic that I remember is about
11:01:51 22 registration.

11:01:51 23 Q. Mr. Stamos, let me just make
11:01:54 24 something -- I think this will go a lot -- when you
11:01:55 25 are answering a question, I will wait until you're

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11:01:58 1 done --

11:01:58 2 A. I apologize.

11:01:59 3 Q. -- and you'll do the same, okay?

11:02:00 4 A. I apologize.

11:02:01 5 Q. Because this is going to drive Nancy

11:02:05 6 crazy. Let me see, where were we?

11:02:08 7 What were the topics of the

11:02:10 8 discussions that you had with Mr. Merkin with

11:02:13 9 respect to government regulations?

11:02:14 10 A. I recall one topic about registration

11:02:17 11 as an investment advisor. There may have been other

11:02:20 12 topics, but that's the topic I recall.

11:02:23 13 Q. What do you recall about that topic?

11:02:27 14 A. Be more specific.

11:02:29 15 Q. Well, you had discussions with

11:02:31 16 Mr. Merkin concerning registration as an investment

11:02:35 17 advisor, right?

11:02:36 18 A. Yes.

11:02:38 19 Q. So, what was discussed?

11:02:44 20 A. I can recall a topic that we

11:02:48 21 discussed and maybe other topics will come to mind,

11:02:52 22 but one topic I recall was our desire, that's SP

11:02:57 23 Capital which became Sterling Stamos, our desire to

11:03:00 24 become a registered investment advisor.

11:03:02 25 Q. And I believe, from our records, from

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11:03:09 1 what I've read, SP Capital or Sterling Stamos
11:03:13 2 registered as an investment advisor in 2005; is that
11:03:13 3 right?

11:03:17 4 A. Yes, I believe that's correct.

11:03:18 5 Q. June or July of 2005?

11:03:21 6 A. June or July of 2005 sounds like the
11:03:24 7 right date to me.

11:03:25 8 Q. So, when did Sterling Stamos, when
11:03:29 9 does the topic of Sterling Stamos' registration as
11:03:33 10 an investment advisor first come up?

11:03:39 11 A. With Mr. Merkin or in general?

11:03:42 12 Q. Let's back up. In general.

11:03:43 13 A. In general I believe we started to
11:03:45 14 talk about registration as early as 2003,
11:03:49 15 internally.

11:03:50 16 Q. Why did that subject come up
11:03:51 17 internally?

11:03:54 18 A. I think there were two reasons. Not
11:03:56 19 necessarily in this order. One is that we were
11:03:58 20 interested in becoming registered to raise our bar,
11:04:04 21 if you will, to become a more institutional quality
11:04:10 22 firm.

11:04:11 23 Number two is we received some
11:04:13 24 indication from, I believe, Schulte Roth & Zabel
11:04:18 25 that this was potentially a pending requirement for

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11:04:20 1 a firm such as ours. Some combination of our desire
11:04:26 2 plus that it was likely or it was possible that it
11:04:30 3 would be required.

11:04:33 4 Q. Okay. Dealing with the first point
11:04:34 5 that you raised, why did you think that registering
11:04:39 6 as an investment advisor would raise the bar of your
11:04:43 7 firm?

11:04:44 8 A. Our initial investments were from
11:04:47 9 families, primarily friends and family, if you will.
11:04:52 10 We believed that after two or three years of
11:04:55 11 investing, we could attract institutional capital
11:04:57 12 and it was our sense that institutional clients
11:05:01 13 would either, A, appreciate or, B, require that we
11:05:07 14 be registered.

11:05:08 15 Q. And did Sterling Stamos hire a
11:05:11 16 consultant to advise you on whether or not to
11:05:13 17 register as an investment advisor in 2003?

11:05:17 18 A. We may have. I don't recall. It
11:05:19 19 would not surprise me if we did, particularly if you
11:05:22 20 include in the context of consulting the work that
11:05:26 21 our lawyers did for us.

11:05:30 22 Q. In connection with those initial
11:05:32 23 discussions as to whether or not Sterling Stamos
11:05:34 24 should register as an investment advisor, did anyone
11:05:39 25 within the Sterling Stamos organization have

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11:05:42 1 discussions with Saul Katz about registering as an
11:05:45 2 investment advisor?

11:05:46 3 A. Yes.

11:05:48 4 Q. Who had those discussions with Saul
11:05:51 5 Katz?

11:05:52 6 A. I don't recall who the individuals
11:05:57 7 were specifically, but I know the people who were
11:06:01 8 involved. So I don't know whether they had phone
11:06:03 9 conversations or email conversations or
11:06:05 10 conversations with people who had spoke to Saul, but
11:06:09 11 I know that communication occurred. And I might
11:06:11 12 have been one of those people myself.

11:06:13 13 Q. And who are the people involved?

11:06:16 14 A. The primary people involved at the
11:06:19 15 time would have been Derek Daley, who at that time
11:06:22 16 was serving as our in-house general counsel. Kevin
11:06:30 17 Okimoto, who was leading our investor relations
11:06:36 18 group, and myself.

11:06:37 19 Q. Was Ashok Chachra part of those
11:06:42 20 discussions?

11:06:42 21 A. I believe Ashok would have been
11:06:44 22 involved as well because he was the lead investment
11:06:46 23 person other than myself at the time.

11:06:49 24 Q. What about Deborah, and I'm probably
11:06:54 25 going to her butcher name, too, Peppins or Pipines?

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11:06:56 1 A. She was a consultant to the firm and
11:06:58 2 she may well have been involved as well.

11:07:01 3 Q. Other than Mr. Okimoto, Mr. Chachra,
11:07:06 4 Ms. Pipines -- am I pronouncing that right?

11:07:06 5 A. Pipines, I believe.

11:07:09 6 Q. -- Pipines, and possibly yourself and
11:07:10 7 Mr. Daley, were there any other individuals involved
11:07:13 8 with discussions with Mr. Katz with respect to
11:07:15 9 registering as an investment advisor?

11:07:20 10 A. Individuals in our firm?

11:07:22 11 Q. Yes.

11:07:22 12 A. There may well have been. I don't
11:07:24 13 recall the specifics, but other members of our firm
11:07:27 14 may well have been involved as well.

11:07:31 15 Q. What were the nature of those
11:07:34 16 discussions with Mr. Katz?

11:07:38 17 A. He expressed his concern about our
11:07:40 18 registering.

11:07:43 19 Q. And what concern did Mr. Saul Katz
11:07:45 20 express about Sterling Stamos registering as an
11:07:49 21 investment advisor?

11:07:50 22 A. What I recall, and my recollection
11:07:53 23 was refreshed by seeing some of the emails that I
11:07:55 24 submitted to you, was that he was concerned that
11:07:59 25 this would possibly interfere in his relationship

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11:08:03 1 with Mr. Madoff.

11:08:05 2 Q. And how -- well, why did Mr. Katz
11:08:09 3 believe that Sterling Stamos registering as an
11:08:13 4 investment advisor would interfere with his
11:08:16 5 relationship with Mr. Madoff?

11:08:17 6 MR. GOUDISS: I object to the form.
11:08:19 7 Go ahead.

11:08:21 8 A. Could you be more specific.

11:08:26 9 Q. Well, Mr. Katz had investments with
11:08:28 10 Madoff, right?

11:08:32 11 A. Correct.

11:08:33 12 Q. Okay. And you said that Mr. Katz
11:08:36 13 expressed concern that Sterling Stamos registering
11:08:40 14 as an investment advisor could possibly interfere
11:08:44 15 with his relationship with Madoff.

11:08:46 16 A. Correct.

11:08:47 17 Q. So, what were his concerns?

11:08:50 18 A. I came to understand his concern to
11:08:53 19 be that Mr. Madoff had expressed his concern to
11:09:02 20 Mr. Katz.

11:09:05 21 Q. But we're going to get through this,
11:09:08 22 I promise.

11:09:10 23 What did Mr. Madoff express -- strike
11:09:15 24 that.

11:09:17 25 What were Mr. Madoff's concerns with

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11:09:22 1 Sterling Stamos registering as an investment
11:09:25 2 advisor?

11:09:25 3 A. I don't know the answer to that
11:09:26 4 question. You'd have to ask Mr. Katz.

11:09:29 5 Q. What did Mr. Katz tell you that
11:09:33 6 Mr. Madoff's concerns were with Sterling Stamos
11:09:37 7 registering as an investment advisor?

11:09:40 8 A. What I recall is Mr. Katz expressing
11:09:42 9 the concern that our registration, that is Sterling
11:09:45 10 Stamos, would require that Mr. Katz disclose all of
11:09:50 11 his investment holdings, including all business
11:09:54 12 relationships with Mr. Madoff.

11:09:57 13 Q. Why did that cause Mr. Katz concern?

11:10:02 14 MR. GOUDISS: I object. Go ahead.

11:10:07 15 A. Are you asking me what he thought or
11:10:10 16 asking what he said to me?

11:10:12 17 Q. That's a valid point. What did he
11:10:14 18 tell you?

11:10:15 19 A. What I recall is his expressing his
11:10:18 20 concern that Mr. Madoff was concerned about
11:10:23 21 confidentiality and things of that nature.

11:10:26 22 Q. Anything else?

11:10:28 23 A. I don't recall anything specifically.
11:10:30 24 I do recall trying to ascertain what the concerns
11:10:34 25 were.

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11:10:35 1 Q. And what did you do to try to
11:10:38 2 ascertain what the concerns were?

11:10:41 3 A. I believe my recollection on this was
11:10:43 4 refreshed by looking at emails that I had submitted
11:10:46 5 to you. I believe that we sought the counsel of
11:10:52 6 Schulte Roth & Zabel, specifically Stephanie
11:10:54 7 Breslow.

11:10:54 8 Q. Pardon, who was that?

11:10:57 9 A. Stephanie Breslow.

11:11:00 10 Q. When did you seek the counsel of
11:11:04 11 Schulte Roth in connection with the concerns that
11:11:06 12 were raised by Mr. Katz?

11:11:08 13 A. In the time frame that we were
11:11:10 14 considering registration.

11:11:12 15 Q. The initial consideration, so we're
11:11:14 16 talking 2003?

11:11:15 17 A. On an ongoing basis. But once
11:11:17 18 Mr. Katz raised that issue, then we sought that. It
11:11:21 19 was probably later than 2000 -- could have been late
11:11:24 20 2004, could have been early 2005.

11:11:28 21 Q. Now, just a simple yes or no. I
11:11:31 22 don't want to ask you about what, the substance of
11:11:35 23 the counsel that was given to you by Schulte Roth,
11:11:38 24 but did they provide you advice concerning the issue
11:11:41 25 of registering as an investment advisor, yes or no?

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11:11:45 1 A. Can you be specific as to what you
11:11:47 2 mean by "you."

11:11:49 3 Q. Did they provide Sterling Stamos.

11:11:52 4 A. I believe they did through our office
11:11:54 5 of our general counsel.

11:11:55 6 Q. Okay. Now, in response to the advice
11:12:00 7 that was given by Schulte Roth, what did you do?
11:12:03 8 What did Sterling Stamos do?

11:12:05 9 MR. GOUDISS: I object. Can I go off
11:12:10 10 the record?

11:12:10 11 MR. BOHORQUEZ: Why do we need to go
11:12:12 12 off the record?

11:12:13 13 MR. GOUDISS: Because I think you're
11:12:14 14 backing into privileged advice. It's nice to tell
11:12:17 15 us, you don't have to tell me the substance of what
11:12:20 16 your lawyers told you, but asking you what you did
11:12:23 17 after your lawyers told you something is very close.

11:12:29 18 MR. BOHORQUEZ: Are you instructing
11:12:31 19 him not to answer?

11:12:31 20 MR. GOUDISS: Unless I can confer
11:12:33 21 with him, I will instruct him, but I understood that
11:12:36 22 you didn't want to get into privileged information.
11:12:40 23 I think you're coming dangerously close. I'm trying
11:12:42 24 to figure out if there's a way to answer your
11:12:45 25 question without waiving privilege.

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11:12:46 1 MR. BOHORQUEZ: Okay. Let me
11:12:47 2 rephrase the question.

11:12:48 3 MR. GOUDISS: Okay.

11:12:54 4 BY MR. BOHORQUEZ:

11:12:54 5 Q. Can you explain to me what steps you
11:12:59 6 took from 2003 when Mr. Katz raised his concerns
11:13:05 7 with Sterling Stamos registering as an investment
11:13:09 8 advisor because of his investments with Mr. Madoff,
11:13:12 9 to the point when Sterling Stamos eventually
11:13:15 10 registered as an investment advisor in June or July
11:13:19 11 of '05?

11:13:22 12 A. First of all, I don't know that he
11:13:24 13 expressed that concern in 2003 or 2004.

11:13:27 14 Q. Okay.

11:13:28 15 A. So is the question, what steps did we
11:13:32 16 take to become registered? Is that the question
11:13:35 17 you'd like me to --

11:13:36 18 Q. Well, two questions. What steps did
11:13:38 19 you take in response to Mr. Katz's concerns that
11:13:42 20 Sterling Stamos' registration as an investment
11:13:44 21 advisor could complicate or raise issues with his
11:13:48 22 investments with Madoff?

11:13:52 23 A. That's too broad a question and
11:13:54 24 outside my area of expertise. I was not the person
11:13:57 25 taking the legal steps to set up registration. That

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11:14:00 1 was our general counsel.

11:14:01 2 Q. I'm not asking about the legal steps.
11:14:04 3 I'm asking -- let me try to rephrase the question
11:14:06 4 again.

11:14:07 5 You testified that Mr. Katz raised
11:14:09 6 some concerns with Sterling Stamos registering as an
11:14:13 7 investment advisor, right?

11:14:14 8 A. Yes.

11:14:14 9 Q. And those concerns that Mr. Katz
11:14:17 10 expressed were in connection with his investments
11:14:20 11 with Bernie Madoff, right?

11:14:24 12 A. What I believe he expressed to me was
11:14:26 13 his concerns about his investments in other business
11:14:29 14 relationships that he has with Mr. Madoff.
11:14:34 15 Investments and other business relationships.

11:14:38 16 Q. What did Sterling Stamos do after
11:14:40 17 Mr. Katz raised those concerns?

11:14:42 18 A. As CEO I recall two steps. First was
11:14:46 19 to try to alleviate his, Mr. Katz's concerns,
11:14:50 20 because he was our investor and is our business
11:14:52 21 partner. And the second was we went, undertook
11:14:57 22 steps to register ourselves.

11:15:00 23 Q. And what did you do -- let me
11:15:05 24 rephrase. What did Sterling Stamos do to alleviate
11:15:11 25 Saul Katz's concerns?

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11:15:13 1 A. We sought to determine what in fact
11:15:16 2 would have to be disclosed as a registered
11:15:19 3 investment advisor.

11:15:22 4 Q. And when you say you sought to
11:15:24 5 determine what in fact would have to be disclosed as
11:15:27 6 a registered investment advisor, does that include
11:15:31 7 what had to be disclosed with respect to his
11:15:34 8 investments with Madoff?

11:15:36 9 A. It may well have included that. I'm
11:15:39 10 not familiar with the exact form of this, but I
11:15:43 11 believe there's something called a form ADV that we
11:15:46 12 file. What would have to be disclosed on that, as
11:15:50 13 an example.

11:15:51 14 Q. Were you able -- and when I say you,
11:15:55 15 Sterling Stamos, your managing team, were you able
11:15:58 16 to alleviate Mr. Katz's concerns?

11:16:03 17 A. To some extent, yes, but not fully.

11:16:07 18 Q. What do you mean by that?

11:16:12 19 A. In order to fully alleviate his
11:16:16 20 concerns, we had to create a more formal separation
11:16:21 21 of our activities with Sterling Equities.

11:16:25 22 Q. And did you create a more formal
11:16:28 23 separation between your relationship with Sterling
11:16:31 24 Equities?

11:16:32 25 A. I believe so. I recall at least one

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11:16:36 1 specific thing that we did that made us more
11:16:41 2 separated in a formal sense.

11:16:43 3 Q. And what was that?

11:16:45 4 A. At the time we were trying -- we
11:16:47 5 shared office space, and I believe we had a period
11:16:51 6 of time where we had an overlapping information
11:16:53 7 system. And we were contemplating a move to the
11:16:56 8 same office space. We decided to do what I recall,
11:17:01 9 two things.

11:17:02 10 Number one was to move to separate
11:17:04 11 office spaces. So they would occupy a space in a
11:17:10 12 different building and we would be occupied in a
11:17:12 13 different building.

11:17:14 14 And, secondly, we would create,
11:17:16 15 through ways that are legal and otherwise, a more
11:17:22 16 definitive separation between the operating partners
11:17:25 17 of the firm who run the business on a daily basis,
11:17:29 18 and the role of the Sterling partners as equity
11:17:33 19 owners of the business but removing them from
11:17:36 20 operating responsibilities.

11:17:39 21 Q. Thank you. I just want to circle
11:17:42 22 back to some of the items that you raised.

11:17:47 23 When you say at the time we shared
11:17:50 24 office space, what time frame are you referring to?

11:17:56 25 A. From inception until the time we

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11:17:59 1 moved to our current address. I believe that was
11:18:05 2 575 Fifth Avenue. We moved to 450 Park Avenue. And
11:18:09 3 I don't recall the exact date, but I believe it was
11:18:11 4 in the 2005 time frame.

11:18:13 5 Q. And when you said "we shared office
11:18:16 6 space," who, what Sterling entity are you referring
11:18:20 7 to?

11:18:21 8 A. When I say "we," I'm referring to the
11:18:25 9 Sterling Stamos operating partners, people who
11:18:28 10 worked in the business, with Sterling Equities,
11:18:33 11 which is Mr. Katz and Mr. Wilpon's company.

11:18:38 12 Q. There are, as you probably know,
11:18:43 13 there are dozens of Sterling related entities. So
11:18:46 14 when you say Sterling Equities, are you referencing
11:18:49 15 Sterling Equities specifically or some other
11:18:51 16 Sterling entity that you shared office space with?

11:18:54 17 A. I don't know how their entities are
11:18:56 18 called. I do know whatever was headquartered at 575
11:19:01 19 Fifth Avenue, their Manhattan office, and when you
11:19:05 20 walked in the door it said Sterling Equities.

11:19:08 21 Q. And who from Sterling Equities, what
11:19:10 22 individuals had their offices at 575 Fifth Avenue?

11:19:15 23 A. I don't recall all of their names,
11:19:17 24 but I recall that Mr. Wilpon had an office there and
11:19:20 25 Mr. Katz had an office there, and I believe

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11:19:22 1 Mr. Marvin Tepper had an office there.

11:19:25 2 Q. And when did Sterling Stamos move to
11:19:30 3 Park Avenue?

11:19:31 4 A. I don't recall the exact date. I
11:19:33 5 believe it was 2005.

11:19:47 6 Q. The second step that you said you
11:19:49 7 took was to create a more definitive separation
11:19:53 8 between the operating partners of the firm who run
11:19:55 9 the business on a daily basis and the role of the
11:19:58 10 Sterling partners as equity owners of the business.
11:20:02 11 Can you explain to me in further detail what you
11:20:04 12 mean by that?

11:20:05 13 A. Can you be more specific as to what
11:20:07 14 you would like me to discuss?

11:20:13 15 Q. Struggling how to ask for a more
11:20:16 16 specific question that I want more specificity for.

11:20:20 17 Okay, you said that the second step
11:20:23 18 you took was by creating more definitive separation
11:20:26 19 between the operating partners of the firm who run
11:20:29 20 the business on a daily business and the role of the
11:20:31 21 Sterling partners as equity owners of the business.

11:20:35 22 So, before you took that step, what
11:20:37 23 were the Sterling partners' roles with respect to
11:20:43 24 Sterling Stamos?

11:20:44 25 A. I can give you an example.

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11:20:47 1 Prior to that decision, Mr. Katz,
11:20:51 2 Saul Katz, would often participate in our investment
11:20:55 3 committee meetings. Post that decision, we created
11:21:04 4 a separation from our investment committee and the
11:21:06 5 business decisions about the firm.

11:21:13 6 Q. When did Sterling Stamos implement
11:21:16 7 that separation?

11:21:17 8 A. I believe it was at the same time
11:21:18 9 that we became registered and made the move, the
11:21:21 10 physical move. In the 2005 time frame.

11:21:26 11 Q. Okay. So Mr. Saul Katz was a member
11:21:33 12 of the investment committee from inception to
11:21:36 13 roughly June or July of '05?

11:21:39 14 A. I don't recall his specific dates and
11:21:42 15 I don't even recall whether we had a, quote, formal
11:21:47 16 investment committee, but I recall him participating
11:21:49 17 in investment committee discussions prior to that
11:21:52 18 period of time, during that time period.

11:21:56 19 Q. Okay. And these investment committee
11:21:57 20 meetings or discussions, are these monthly,
11:22:04 21 biweekly, quarterly, are they periodic meetings?

11:22:08 22 A. Periodic meetings.

11:22:09 23 Q. So they're not held on a monthly or
11:22:12 24 quarterly basis?

11:22:13 25 A. At what time frame are you speaking

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11:22:14 1 of?

11:22:15 2 Q. Let me be specific. From the time
11:22:17 3 frame between June of '02 to June of '05, which is
11:22:21 4 roughly when you registered as an investment
11:22:23 5 advisor.

11:22:24 6 A. Um-hum.

11:22:24 7 Q. These investment committee meetings
11:22:26 8 that you had at Sterling Stamos, were they held on a
11:22:32 9 biweekly basis or a monthly basis or a quarterly
11:22:35 10 basis?

11:22:35 11 A. What I recall is during that time
11:22:38 12 frame we would meet on a regular but ad hoc basis.
11:22:43 13 I don't recall whether we had weekly, biweekly,
11:22:46 14 quarterly meetings. I recall meeting on a regular
11:22:51 15 basis but on an ad hoc basis.

11:22:53 16 Q. So, roughly speaking, once a month or
11:22:56 17 every other month? How often would you meet during
11:23:00 18 the year?

11:23:00 19 A. It's hard to characterize a meeting
11:23:04 20 of an investment committee when you have only four
11:23:07 21 or five members of your firm. So, in one sense, we
11:23:11 22 could be meeting literally every day to review
11:23:23 23 ideas, during that time frame.

11:23:25 24 Q. During that time frame. Would
11:23:27 25 Mr. Saul Katz participate in these meetings on a

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11:23:31 1 daily basis?

11:23:33 2 A. I don't recall him participating on a
11:23:35 3 daily basis. I recall him participating on a more
11:23:39 4 periodic basis when we had a decision to make.

11:23:43 5 Q. And what types of decisions were
11:23:48 6 Mr. Saul Katz involved in?

11:23:51 7 A. During that time frame --

11:23:54 8 Q. Yes.

11:23:55 9 A. -- he was involved in decisions about
11:23:57 10 managers that we should invest in and managers that
11:24:00 11 we should not invest in. We involved him in those
11:24:04 12 discussions.

11:24:07 13 Q. Any other types of discussions that
11:24:10 14 Mr. Katz was involved in?

11:24:12 15 A. He was intimately involved in the
11:24:14 16 financial and business aspects of the business.

11:24:19 17 Q. When you say the financial aspects of
11:24:22 18 the business, what do you mean by that?

11:24:25 19 A. For example, payroll, budget,
11:24:31 20 profitability, capital expenditures.

11:24:35 21 Q. So the operational side?

11:24:37 22 A. Yes, the operational financial side
11:24:39 23 of the business, as an owner of the business.

11:24:42 24 Q. When you say that Mr. Saul Katz was
11:24:45 25 intimately involved in the operational side of the

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11:24:48 1 business, what do you mean by that?

11:24:49 2 A. During the early stages of the
11:24:52 3 company we didn't make any, that I recall,
11:24:53 4 significant business decisions without his approval.
11:24:56 5 That changed as the firm evolved.

11:25:02 6 Q. Did that change after you
11:25:04 7 registered -- as a result, let me rephrase it. Did
11:25:06 8 that change as a result of registering as an
11:25:10 9 investment advisor?

11:25:11 10 MR. GOUDISS: I object. Go ahead.

11:25:13 11 A. I can't answer the question whether
11:25:16 12 it was as a result or whether it was part of a
11:25:19 13 process.

11:25:19 14 Q. When did that change?

11:25:22 15 A. I believe it changed
11:25:23 16 contemporaneously over the same time frame in the
11:25:27 17 context of the evolution of the firm.

11:25:31 18 Q. But did it have anything to do with
11:25:34 19 Sterling Stamos' registering as an investment
11:25:36 20 advisor?

11:25:39 21 A. It may well have been part of the
11:25:43 22 process that we went through to create separation
11:25:45 23 between the financial management of the business and
11:25:49 24 the investment side of the business.

11:25:55 25 Q. Other than the two steps that we've

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11:25:58 1 gone over, the separation of the office space and
11:26:01 2 the separation of Mr. Katz's role in the investment
11:26:08 3 side of the business, are there any other steps that
11:26:10 4 you took?

11:26:11 5 A. When you refer to "you," you mean the
11:26:14 6 firm?

11:26:14 7 Q. Yes.

11:26:15 8 A. I believe the firm took other steps
11:26:17 9 but you would have to confer with our counsel. I
11:26:21 10 believe we structured ourselves differently in terms
11:26:24 11 of how our documents were written, for example. But
11:26:28 12 that's not something I have any knowledge of,
11:26:31 13 specifically.

11:26:31 14 Q. Well, what knowledge do you have,
11:26:33 15 generally speaking?

11:26:35 16 A. Generally speaking, my understanding
11:26:37 17 is that we created a more -- a separate, more
11:26:44 18 separate structure so that we would have board
11:26:48 19 meetings to discuss business issues and have
11:26:51 20 investment committee meetings to discuss investment
11:26:54 21 issues, and that those two would remain separate, to
11:27:01 22 make clear that Mr. Katz, in particular, and the
11:27:04 23 Sterling Equities partners were not involved in the
11:27:07 24 investment decision-making of the firm.

11:27:15 25 Q. So I take it from your response that

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11:27:19 1 Saul Katz was a member of the board?

11:27:22 2 A. Was and is.

11:27:23 3 Q. And is. Okay. Has he been a member
11:27:26 4 of the board since inception?

11:27:31 5 A. I pause a bit. I don't recall when
11:27:32 6 the board was formed, but whenever the board was
11:27:35 7 formed he was, to my recollection, always a member
11:27:38 8 of the board.

11:27:38 9 Q. Okay. When the board was formed, who
11:27:41 10 else were members of the board at its inception?

11:27:45 11 A. I don't recall who the original
11:27:46 12 members of the board were. I know who the current
11:27:49 13 members of the board are.

11:27:50 14 Q. And who are the current members of
11:27:52 15 the board?

11:27:53 16 A. To the best of my knowledge, current
11:27:54 17 members are Mr. Saul Katz, Spiro Stamos, my father,
11:28:04 18 myself and then three members of the board are
11:28:08 19 represented by executives at Merrill Lynch. Bank of
11:28:15 20 America/Merrill Lynch.

11:28:17 21 Q. Does the board have formal meetings?

11:28:20 22 A. Yes.

11:28:24 23 Q. How often does the board meet?

11:28:29 24 A. As much as four times a year.

11:28:32 25 Q. So quarterly meetings?

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11:28:34 1 A. Quarterly meetings. Occasionally
11:28:36 2 miss a quarterly meeting, but we try to have
11:28:40 3 quarterly meetings.

11:28:41 4 Q. And these quarterly meetings have
11:28:43 5 been held since inception of the board?

11:28:45 6 A. I don't recall whether that's been
11:28:47 7 since inception. I do recall what has occurred over
11:28:51 8 the last two or three years.

11:28:54 9 Q. Have you had these quarterly meetings
11:29:00 10 since Merrill Lynch bought its interest in Sterling
11:29:03 11 Stamos?

11:29:04 12 A. I believe so.

11:29:04 13 Q. And that was June of '07?

11:29:06 14 A. June of '07.

11:29:08 15 Q. Was that also June 17th?

11:29:11 16 A. No. I believe that was June 30th or
11:29:13 17 July 1st, 2007.

11:29:21 18 Q. Okay.

11:29:21 19 MR. GOUDISS: Off the record. When
11:29:22 20 you hit a breaking spot, would you let us know.

11:29:28 21 MR. BOHORQUEZ: If you want to take a
11:29:29 22 break now, that's -- well, actually, how much time
11:29:30 23 is left on the tape?

11:29:37 24 THE VIDEOGRAPHER: About seven
25 minutes left on the tape.

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1 MR. BOHORQUEZ: Yeah, If you'd like
2 to break now, that's fine. He can just change
3 tapes. I like to time it around the tapes so we
4 don't waste time.

5 MR. GOUDISS: That's fine. Thank
6 you.

11:29:38 7 THE VIDEOGRAPHER: Going off the
11:29:39 8 record, the time is 11:30. This ends tape number 1.

11:29:55 9 (Recess taken.)

11:53:27 10 THE VIDEOGRAPHER: We are back on the
11:53:38 11 record. The time is 11:54. This is tape number 2.

11:53:46 12 BY MR. BOHORQUEZ:

11:53:46 13 Q. Welcome back, Mr. Stamos. I want to
11:53:48 14 show you what we're going to be marking as Exhibit
11:54:02 15 1. We'll do PS-1.

11:54:02 16 (Exhibit PS-1 marked for
11:54:06 17 identification.)

11:54:14 18 Q. Mr. Stamos, what I've handed you is
11:54:18 19 an email chain between Maria Gagne and Gillian
11:54:23 20 Peoples from August 16th, 2004 concerning an
11:54:27 21 investment committee. I just want to ask you a
11:54:29 22 couple follow-up questions with respect to the
11:54:32 23 investment committee we discussed earlier this
11:54:34 24 morning based off of this document. Let me know
11:54:36 25 when you're ready.

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11:54:37 1 A. I'm ready.

11:54:42 2 Q. Who is Maria Gagne? Do you know who
11:54:42 3 she is?

11:54:47 4 A. An administrative assistant, was an
11:54:49 5 administrative assistant in the firm.

11:54:51 6 Q. In August of 2004, I suppose?

11:54:55 7 A. Yes.

11:54:55 8 Q. And Gillian Peoples, was she also at
11:55:00 9 Sterling Stamos at that time?

11:55:01 10 A. Yes.

11:55:01 11 Q. Earlier this morning we had discussed
11:55:04 12 that Sterling Stamos had an investment committee and
11:55:08 13 that you weren't sure as to how formal or informal
11:55:16 14 it was. Is the investment committee that's
11:55:18 15 referenced in this email the same investment
11:55:20 16 committee that you testified to this morning or is
11:55:23 17 it a different investment committee?

11:55:25 18 MR. GOUDISS: I object to the form of
11:55:26 19 the question. Go ahead.

11:55:28 20 A. I don't recall which investment
11:55:30 21 committee you were referring to that I testified to.

11:55:33 22 Q. Okay, let's back up.

11:55:38 23 Reading this email and the list of
11:55:41 24 members identified in the email, do you know what
11:55:45 25 investment committee this is referencing?

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11:55:52 1 A. I believe I do.

11:55:53 2 Q. And what do you believe it is?

11:55:57 3 A. I believe this is a group of advisors
11:56:01 4 who would provide counsel to us about potential
11:56:06 5 investments.

11:56:10 6 Q. I just want to go through the list of
11:56:12 7 individuals and if you can identify for me who they
11:56:15 8 are.

11:56:16 9 Ellen Horing -- how do you pronounce
11:56:19 10 that?

11:56:21 11 A. Horing.

11:56:21 12 Q. Horing. Who is she?

11:56:23 13 A. She is, I believe she was at the time
11:56:27 14 either an investor with us and/or a part-time
11:56:34 15 employee of us at the time.

11:56:35 16 Q. And what was her position as a
11:56:37 17 part-time employee at that time?

11:56:44 18 A. Long/short equity analyst.

11:56:48 19 Q. Is she still at Sterling Stamos?

11:56:51 20 A. No.

11:56:51 21 Q. When did she leave?

11:56:53 22 A. I don't recall when she left.

11:56:55 23

11:57:00 24 *REDACTED*

11:57:03 25

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12:04:35 9 Q. The next list is Chuck Klein.

12:04:38 10 A. Yes.

12:04:39 11 Q. Next on the list is Chuck Klein. Is
12:04:41 12 that the same Chuck Klein from American Securities?

12:04:46 13 A. Yes.

12:04:47 14 Q. And why was Mr. Klein on this list of
12:04:53 15 group of advisors?

12:04:55 16 A. He was one of the original
12:04:57 17 individuals that Mr. Katz introduced me to as
12:05:02 18 someone who would introduce us to managers in hedge
12:05:06 19 funds and private equity.

12:05:09 20 Q. And when did you first -- when did
12:05:12 21 Saul Katz introduce you to Mr. Klein?

12:05:15 22 A. I don't recall the exact date. I
12:05:17 23 believe it was sometime in the 1990s.

12:05:30 24 Q. And did you have discussions with
12:05:33 25 Mr. Klein about the formation of Sterling Stamos?

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12:05:39 1 A. Yes.

12:05:39 2 Q. And what did you discuss with

12:05:41 3 Mr. Klein with respect to the formation of Sterling

12:05:44 4 Stamos?

12:05:48 5 A. Saul Katz and I asked his counsel

12:05:51 6 about whether it would make sense to set up Sterling

12:05:56 7 Stamos, at the time SP Capital. Sought his counsel.

12:06:01 8 Q. And when was that? When did you have

12:06:03 9 that discussion?

12:06:05 10 A. I believe it was in early 2002.

12:06:08 11 Q. And what did Mr. Klein say?

12:06:14 12 A. What did he say to me?

12:06:16 13 Q. Um-hum.

12:06:18 14 A. He thought it would be a good idea to

12:06:20 15 set up a diversified portfolio of managers to invest

12:06:23 16 in.

12:06:24 17 Q. Did he say anything else to you with

12:06:26 18 respect to that question?

12:06:27 19 A. Yes.

12:06:28 20 Q. What else did he say?

12:06:30 21 A. He thought that I would be good in

12:06:34 22 that role.

12:06:36 23 Q. And what role was that?

12:06:38 24 A. As an individual who could meet with

12:06:41 25 managers and make an assessment as to whether they

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12:06:44 1 would be good for a portfolio.

12:06:49 2 Q. Okay. Do you know if Mr. Klein had
12:06:54 3 any investments with Madoff?

12:06:58 4 A. I don't know for a fact what his
12:07:00 5 investments were, but I do recall him saying to me
12:07:03 6 that he had investments with Mr. Madoff, I believe
12:07:08 7 that he said that to me.

12:07:09 8 Q. And what did he tell you about his
12:07:11 9 investments with Madoff?

12:07:14 10 A. Can you be more specific?

12:07:16 11 Q. I really can't. What did he tell you
12:07:18 12 about his investments with Madoff?

12:07:20 13 MR. GOUDISS: The fact of them?

12:07:24 14 A. Of being an investor?

12:07:26 15 Q. Yes.

12:07:27 16 A. As I recall, he said that he, I
12:07:30 17 believe like Saul Katz, was also an investor with
12:07:33 18 Mr. Madoff. I believe he expressed the concern that
12:07:39 19 I had had as well of single-manager risk, having too
12:07:43 20 much capital in one manager. And that he had bought
12:07:48 21 some form of insurance for that single-manager risk.

12:08:06 22 Q. Did he tell you anything else about
12:08:09 23 the insurance -- actually, let me back up. Strike
12:08:12 24 that.

12:08:12 25 So Mr. Klein, as you understand it,

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12:08:16 1 bought insurance for his Madoff investments?

12:08:19 2 A. I recall him expressing to me that he
12:08:23 3 had purchased some kind of insurance. That's all I
12:08:27 4 recall.

12:08:27 5 Q. And you recall that he had purchased
12:08:31 6 the insurance for his Madoff investments because of
12:08:35 7 this single-manager risk issue?

12:08:39 8 A. I'm not sure if that's why he bought
12:08:41 9 the insurance. I do believe that that was part of
12:08:45 10 the discussion that we had. Single-manager risk,
12:08:49 11 the topic.

12:08:50 12 Q. Did Mr. Klein express any other
12:08:52 13 reasons for why he bought insurance for his Madoff
12:08:56 14 investments?

12:08:56 15 A. At that time?

12:08:57 16 Q. At that time.

12:08:59 17 A. I don't recall.

12:09:00 18 Q. Did Mr. Klein express any other
12:09:04 19 reasons at any time to you as to why he purchased
12:09:07 20 insurance for his Madoff investments?

12:09:12 21 A. If at any time includes 2007, 2008,
12:09:16 22 it is possible, but I don't recall a specific
12:09:19 23 conversation with him.

12:09:21 24 Q. When you say it is possible, what do
12:09:23 25 you mean by that?

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12:09:28 1 A. A number of individuals expressed
12:09:31 2 concerns to me about Madoff as I became more
12:09:35 3 familiar with the world of investing over the course
12:09:38 4 of time. He may have been one of those people, but
12:09:40 5 I don't recall.

12:09:44 6 Q. Other than Mr. Klein, what other
12:09:47 7 individuals expressed to you concerns about
12:09:53 8 investing with Madoff?

12:09:54 9 A. I can't recall all of the individuals
12:09:56 10 who expressed concerns over the years. I can recall
12:09:59 11 an example.

12:10:00 12 Q. Let's start with an example.

12:10:03 13 A. I recall a conversation with Kevin
12:10:07 14 Dunleavy, who was an executive at Merrill Lynch, in
12:10:11 15 which he expressed a concern about Mr. Madoff, being
12:10:14 16 both a broker-dealer and a fund manager, and that
12:10:18 17 that was a concern that he had.

12:10:23 18 Q. And when did you have this discussion
12:10:25 19 with Kevin Dunleavy?

12:10:29 20 A. I believe it was sometime in the
12:10:31 21 period 2007 and 2008.

12:10:37 22 Q. And how did Mr. Dunleavy express that
12:10:41 23 concern to you? Was that in person, over the phone,
12:10:46 24 by email?

12:10:47 25 A. I recall an in-person conversation in

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12:10:50 1 my office at 450 Park Avenue.

12:10:54 2 Q. And who else was present at that
12:10:58 3 conversation with Mr. Dunleavy?

12:11:02 4 A. It is possible that there was more
12:11:05 5 than one conversation. I think it's probable there
12:11:08 6 was more than one conversation with Mr. Dunleavy in
12:11:11 7 my offices about his concerns. Or concern.

12:11:17 8 Q. How many meetings did you have with
12:11:20 9 Mr. Dunleavy at your office concerning -- with
12:11:23 10 respect to his concerns with Madoff?

12:11:26 11 A. I don't know the number. I met with
12:11:27 12 Mr. Dunleavy on a regular basis, as he was one of my
12:11:31 13 board members.

12:11:33 14 Q. When was the first meeting you had
12:11:37 15 with Mr. Dunleavy when he raised his concerns with
12:11:41 16 Madoff?

12:11:41 17 A. I don't recall the first time. I can
12:11:45 18 remember a conversation or two in my office.

12:11:50 19 Q. Was this before or after Merrill
12:11:54 20 Lynch bought into Sterling Stamos in roughly June of
12:11:57 21 '07?

12:11:58 22 A. I don't recall whether it was in the
12:12:00 23 period just before or the period just after.

12:12:03 24 Q. But we can roughly estimate that it
12:12:07 25 was sometime in June of '07?

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12:12:10 1 A. Plus or minus six months to a year,
12:12:13 2 in that time frame.

12:12:15 3 Q. And why did Mr. Dunleavy raise his
12:12:20 4 concerns with Madoff with you?

12:12:23 5 MR. GOUDISS: I object. Go ahead.

12:12:25 6 A. Are you asking me what he said to me?
12:12:28 7 I don't know -- I mean, it's hard for me to
12:12:31 8 speculate as to why, but I can tell you what he said
12:12:33 9 to me.

12:12:34 10 Q. Let's start with what he said to you.

12:12:36 11 A. He expressed concern that my
12:12:38 12 partners, Mr. Wilpon and Mr. Katz, had a substantial
12:12:42 13 amount of assets with Mr. Madoff.

12:12:47 14 Q. And what -- let me rephrase.

12:12:56 15 What were the amount of assets at
12:13:00 16 that time that you understood that Mr. Wilpon and
12:13:02 17 Mr. Katz had with Madoff?

12:13:05 18 A. I don't know the exact amount. I
12:13:07 19 know that it was in the range of two to \$400 million
12:13:11 20 of assets.

12:13:16 21 Q. Other than the amount of money that
12:13:18 22 Mr. Katz and Mr. Wilpon had invested with Madoff,
12:13:24 23 and the single-manager risk -- I'm sorry, it was a
12:13:28 24 term of art that you raised. What was that?

12:13:31 25 A. Single-manager risk.

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12:13:32 1 Q. Right, okay. Let me rephrase.

12:13:36 2 Other than the amount of money that
12:13:38 3 Mr. Wilpon and Mr. Katz had invested with Madoff at
12:13:41 4 that time and the single-manager risk issue that
12:13:46 5 Mr. Dunleavy raised, were there any other concerns
12:13:49 6 that he raised with you with respect to Madoff?

12:13:52 7 MR. GOUDISS: I object to the form.
12:13:53 8 Go ahead.

12:13:53 9 A. I believe I said that I had a
12:13:55 10 discussion with Mr. Klein about single-manager risk.
12:13:57 11 I believe that I said that Mr. Dunleavy expressed
12:14:00 12 the concern that he was a broker-dealer and cleared
12:14:04 13 his own trades, as well as being an investment
12:14:07 14 manager.

12:14:09 15 Q. Okay. Thank you for clearing that
12:14:10 16 up.

12:14:11 17 Did Mr. Dunleavy raise any other
12:14:14 18 concerns with you that he had with Madoff?

12:14:18 19 A. At some point, yes. I'm not sure if
12:14:20 20 it was at that meeting or at some prior -- or, some
12:14:23 21 later meeting.

12:14:24 22 Q. And what were those other concerns?

12:14:26 23 A. Generally, that Merrill Lynch or any
12:14:32 24 other institutional entity like Merrill Lynch would
12:14:36 25 not invest in a manager that cleared his own trades,

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12:14:42 1 because of operation of due diligence issues.

12:14:46 2 More specifically, he expressed
12:14:49 3 concern of a rumor that he had heard that it was
12:14:51 4 possible that Mr. Madoff was using information from
12:14:58 5 his broker-dealer to help him as an investment
12:15:03 6 manager. And I believe the phrase he used was that
12:15:06 7 it could be in the context of something like
12:15:09 8 front-running.

12:15:09 9 Q. What do you understand front-running
12:15:12 10 to be?

12:15:13 11 A. My understanding of it is is that you
12:15:15 12 would -- that a broker, making a set of trades,
12:15:19 13 could put his trade either in front of or behind the
12:15:23 14 trade, to their advantage. In front of the trade or
12:15:27 15 behind the trade, to their advantage.

12:15:31 16 Q. What other concerns did Mr. Dunleavy
12:15:35 17 raise with you about Madoff?

12:15:36 18 MR. GOUDISS: I object. Go ahead.

12:15:38 19 A. What I recall is what I've just said.
12:15:40 20 He may have expressed other things but those are the
12:15:44 21 things I recall.

12:15:47 22 Q. And what was your reaction to these
12:15:54 23 concerns that Mr. Dunleavy raised?

12:15:59 24 A. By 2007 I shared the concern, the
12:16:04 25 first concern, which is the concern about having a

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12:16:08 1 broker-dealer who cleared his own trades being an
12:16:12 2 investment manager. I also shared the concern of
12:16:18 3 having too much capital in any one manager.

12:16:23 4 Q. And how did you come to the
12:16:25 5 conclusion that those two issues were of concern to
12:16:28 6 you?

12:16:30 7 A. It's part of my evolving knowledge of
12:16:32 8 the industry over the course of five or six years.

12:16:42 9 Q. Did you -- let me back up to
12:16:45 10 Mr. Klein. Mr. Klein is the one who raised the
12:16:48 11 single-manager risk issue with you, right?

12:16:51 12 A. I believe I said that we had the
12:16:53 13 discussion about single-manager risk. I'm not sure
12:16:55 14 whether I raised it or he raised it.

12:16:58 15 Q. And can you explain to me
12:17:01 16 specifically what that means.

12:17:02 17 A. I can explain it generally.

12:17:04 18 Q. That's fine.

12:17:05 19 A. Generally, the notion of portfolio
12:17:07 20 construction would suggest that one ought to put
12:17:11 21 their investments into a diversified portfolio of
12:17:15 22 managers, not into a single manager. As a rough
12:17:19 23 rule of thumb, no more than 10 percent in any one
12:17:23 24 manager, for example.

12:17:25 25 Q. Other than the single-manager risk

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12:17:28 1 issue, did you discuss any other concerns that you
12:17:32 2 or Mr. Klein may have had, with Mr. Klein,
12:17:39 3 concerning Madoff?

12:17:41 4 A. I believe the answer to that would be
12:17:43 5 yes, because there are derivative issues of
12:17:46 6 single-manager risk that we would have discussed.

12:17:49 7 Q. What are the derivative issues of
12:17:52 8 single-manager risk?

12:17:54 9 A. For example, what does the -- what is
12:17:58 10 the impact on you as an investor if the manager is
12:18:02 11 hit by a bus.

12:18:06 12 Q. Actually, I understand that one. Are
12:18:10 13 there any other derivative issues?

12:18:14 14 A. Yes. What if the manager has an
12:18:18 15 operational issue in their back office that makes
12:18:23 16 it -- that damages the business and, therefore,
12:18:26 17 stops them from being able to invest well.

12:18:29 18 Q. Are there any other derivative
12:18:33 19 issues?

12:18:34 20 A. Are you saying in theory or to that
12:18:36 21 specific conversation?

12:18:37 22 Q. Generally.

12:18:38 23 A. Generally, in theory, one is worried
12:18:41 24 about single-manager risk for a whole host of
12:18:44 25 derivative issues. Anything that can go wrong with

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12:18:47 1 the manager gets magnified if you're in only one
12:18:52 2 manager.

12:18:53 3 Q. And of those host of issues,
12:18:56 4 derivative issues that you have with single-manager
12:19:00 5 risk, what specific issues did you discuss with
12:19:03 6 Mr. Klein, other than the two you just raised?

12:19:06 7 A. I don't recall at that time having
12:19:07 8 more specific conversation than that.

12:19:10 9 Q. What about any other time?

12:19:15 10 A. Covers too broad a period for me to
12:19:18 11 have a specific memory. I don't recall any other
12:19:21 12 specific conversations.

12:19:22 13 Q. Do you recall any conversations?

12:19:25 14 A. I recall general conversations that I
12:19:28 15 had with Mr. Klein and with Mr. Katz.

12:19:33 16 Q. Let's first discuss the general
12:19:37 17 conversations you had with Mr. Klein. Other than
12:19:40 18 the one that we've discussed, the initial one, what
12:19:43 19 other ones did you have?

12:19:46 20 A. I don't recall the specific time or
12:19:48 21 place, but I recall having conversations with
12:19:52 22 Mr. Klein that may or may not have included Mr. Katz
12:19:56 23 in the room, because we often met together, the
12:20:01 24 three of us. But I do recall discussing with him
12:20:05 25 the concern of what would happen to my partner's

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12:20:11 1 portfolio that was with Mr. Madoff, if Mr. Madoff
12:20:15 2 were to decide to retire because of his age.

12:20:17 3 Q. And when you say your partner's
12:20:19 4 portfolio, who are you referring to specifically?

12:20:22 5 A. The Sterling Equities group, Mr. Katz
12:20:26 6 and Mr. Wilpon being the larger shareholders, but
12:20:30 7 the entire group referred to as Sterling Equities.

12:20:33 8 Q. And what did Mr. Klein say, with
12:20:35 9 respect to that question?

12:20:37 10 A. I believe he shared my concern and
12:20:39 11 thought, as I did, that diversification would be the
12:20:44 12 right answer.

12:20:44 13 Q. Did you have any other -- do you
12:20:48 14 recall any other discussions with Mr. Klein
12:20:50 15 concerning Mr. Madoff?

12:20:53 16 A. I don't recall specific conversations
12:20:56 17 with Mr. Klein that I can recall at this point.

12:21:02 18 Q. You mentioned operational issues that
12:21:05 19 could arise from a single-manager risk. Could you
12:21:10 20 elaborate on that a little more?

12:21:12 21 MR. GOUDISS: I object. Go ahead.

12:21:13 22 A. Can you be more specific?

12:21:14 23 Q. Pardon?

12:21:16 24 A. I don't know what the nature of the
12:21:17 25 question is.

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12:21:18 1 Q. What type of operational issues arise
12:21:20 2 from single-manager risk?

12:21:25 3 A. Operational issues arise in the
12:21:26 4 context of all managers. The issue with
12:21:30 5 single-manager risk is that it is concentrated in
12:21:33 6 one manager.

12:21:34 7 Q. So they're magnified because it's one
12:21:37 8 manager?

12:21:38 9 A. Yes.

12:21:39 10 Q. Generally speaking, from a due
12:21:43 11 diligence perspective, what are some operational
12:21:47 12 issues that you look into when reviewing an
12:21:50 13 investment manager?

12:21:51 14 MR. GOUDISS: I object. Go ahead.

12:21:52 15 A. I'm sorry, can you be more specific?
12:21:56 16 Generally speaking? I don't know what you're asking
12:21:59 17 for. Examples?

12:22:01 18 Q. Yes. Examples of operational issues
12:22:03 19 that arise during the due diligence review of
12:22:07 20 investment managers.

12:22:09 21 A. Does the investment manager have
12:22:11 22 appropriate legal documentation. Does the
12:22:13 23 investment manager have appropriate back-office
12:22:18 24 staff to execute trades, for example.

12:22:23 25 Q. Anything else off the top of your

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12:22:25 1 head?

12:22:25 2 A. Does the investment manager have an
12:22:28 3 adequate amount of assets under management to
12:22:31 4 maintain the operations of his or her business.

12:22:33 5 Q. Anything else?

12:22:34 6 A. Are they a going concern,
12:22:36 7 financially, will they be able to continue to invest
12:22:38 8 in the future. There's a whole host of issues like
12:22:45 9 that.

12:22:45 10 Q. I think we'll probably go through
12:22:47 11 them in greater detail later.

12:22:54 12 You had mentioned that one or maybe
12:22:57 13 more of the discussions that you had with Mr. Klein
12:23:01 14 concerning Madoff Mr. Katz may have been in
12:23:07 15 attendance. Is that right?

12:23:09 16 A. Yes.

12:23:11 17 Q. Can you tell me -- tell me about the
12:23:17 18 discussions that you had with Mr. Klein when
12:23:20 19 Mr. Saul Katz was in attendance.

12:23:22 20 A. I believe that was the answer I just
12:23:24 21 gave. I don't recall them being different.

12:23:28 22 Q. I see. So, just so the record is
12:23:32 23 clear, the issues that we discussed earlier that you
12:23:36 24 raised or that were discussed with Mr. Klein, you
12:23:40 25 believe them to be the same issues that were

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12:23:43 1 discussed at meetings that Mr. Katz was in
12:23:46 2 attendance at?

12:23:49 3 A. I believe that that conversation with
12:23:50 4 Mr. Klein is similar to the discussion that I had
12:23:54 5 with Mr. Klein and Mr. Katz, both present. I can't
12:23:59 6 recall whether they were both present at the same
12:24:01 7 time or whether they were separate meetings.

12:24:08 8 Q. And at the meetings that you had with
12:24:11 9 Mr. Katz, whether Mr. Klein was there or not, that
12:24:16 10 the issues that you set forth concerning Madoff were
12:24:22 11 discussed, what was Mr. Katz's reaction?

12:24:27 12 A. What time frame are you referring to?

12:24:30 13 Q. Well, let's go back to the beginning.
12:24:35 14 I think you said that very early on you had a
12:24:38 15 discussion with Mr. Klein where he raised the issue
12:24:42 16 that he had insurance with Madoff, or covering his
12:24:47 17 Madoff investments, right?

12:24:48 18 A. The insurance piece that he raised, I
12:24:50 19 believe raised with me, I'm not sure that he raised
12:24:53 20 that in front of Mr. Katz or not.

12:24:56 21 Q. So you believe the discussion you had
12:24:58 22 with Mr. Klein concerning his insurance coverage of
12:25:02 23 his Madoff investments was a separate discussion?

12:25:05 24 A. I believe it may have been just with
12:25:07 25 me.

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12:25:10 1 Q. Did you have any discussions with
12:25:13 2 Saul Katz concerning Mr. Klein's insurance coverage
12:25:17 3 of his Madoff investments?

12:25:19 4 A. I don't recall whether I did or not.

12:25:28 5 Q. So let's go back to some of the
12:25:33 6 issues that you discussed with Mr. Klein concerning
12:25:38 7 Madoff.

12:25:39 8 One issue that you discussed was
12:25:46 9 single-manager risk. Did you discuss that issue
12:25:50 10 with Mr. Katz at any time?

12:25:52 11 A. Yes.

12:25:56 12 Q. Can you recall when was the first
12:25:58 13 time you discussed the single-manager risk issue
12:26:01 14 with Mr. Katz?

12:26:02 15 A. I don't recall the first time. I
12:26:04 16 recall the general time frame.

12:26:06 17 Q. Okay. What was the general time
12:26:08 18 frame?

12:26:09 19 A. Sometime after I became an individual
12:26:11 20 investor with Mr. Madoff, which was sometime after
12:26:15 21 1998.

12:26:17 22 Q. I believe it was March of '98, I
12:26:20 23 think, from our records is when you made your first
12:26:23 24 investment with Madoff.

12:26:25 25 A. That sounds correct.

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12:26:27 1 Q. How did you come to invest with
12:26:30 2 Madoff at that time?

12:26:31 3 A. Mr. Katz suggested that I invest with
12:26:33 4 Mr. Madoff.

12:26:35 5 Q. And what did Mr. Katz tell you about
12:26:39 6 investing with Madoff?

12:26:41 7 A. Told me that he was a very good
12:26:44 8 investor, that Mr. Katz and his partners had
12:26:48 9 invested with Mr. Madoff for many years and that
12:26:50 10 they had had stable, consistent returns for many
12:26:54 11 years with him.

12:26:55 12 Q. Did he say anything else in that
12:26:58 13 initial discussion?

12:26:58 14 A. Yes.

12:26:59 15 Q. What else did he say?

12:27:00 16 A. He suggested that I put a portion of
12:27:02 17 my capital with Mr. Madoff and that I continue to
12:27:05 18 manage a portion of the capital myself.

12:27:09 19 Q. And this is in the 1998 time frame
12:27:12 20 we're talking about?

12:27:14 21 A. '98, '99, 2000, 2001.

12:27:17 22 Q. Before Saul Katz suggested to you
12:27:20 23 that you should invest with Madoff, what did you
12:27:25 24 know about Bernie Madoff?

12:27:28 25 A. I don't believe I knew anything about

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12:27:29 1 Mr. Madoff. I believe the first time I heard about
12:27:31 2 Mr. Madoff was from Mr. Katz. It's possible I could
12:27:36 3 have heard something or read something about him,
12:27:38 4 but it was not part of my knowledge at that time,
12:27:40 5 that I recall.

12:27:41 6 Q. Before you actually invested your
12:27:45 7 money with Madoff in March of '98, did you do any
12:27:49 8 investigation or any analysis into Mr. Madoff's
12:27:54 9 investment firm?

12:27:55 10 A. None that I can recall.

12:27:56 11 Q. Before you invested with Madoff in
12:28:00 12 March of '98, did you have discussions with any
12:28:03 13 other Sterling partners about Madoff?

12:28:07 14 A. It is very possible that when
12:28:10 15 Mr. Katz told me or made the suggestion to invest
12:28:14 16 with Mr. Madoff, that there were other partners in
12:28:16 17 the room.

12:28:18 18 Q. And what other partners do you
12:28:21 19 believe -- well, strike that.

12:28:22 20 Where was this discussion held?

12:28:27 21 A. I don't recall whether it was in
12:28:30 22 their Manhattan office or in their Long Island
12:28:33 23 office, or whether the first discussion was by
12:28:37 24 telephone. I don't recall.

12:28:39 25 Q. And who, other than Mr. Katz, who

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12:28:42 1 else do you believe was there?

12:28:44 2 A. I believe Mr. Wilpon, Mr. Fred Wilpon
12:28:46 3 may have been there as well.

12:28:48 4 Q. Do you recall if Mr. Fred Wilpon said
12:28:52 5 anything with respect to Madoff at that time?

12:28:59 6 A. I don't recall anything specifically
12:29:00 7 that he said at that time.

12:29:04 8 Q. Before investing with Madoff in March
12:29:10 9 of '98, did you have discussions with anybody about
12:29:15 10 Madoff before you actually put your money in?

12:29:18 11 A. I don't recall any conversations with
12:29:20 12 anybody about investing with Madoff other than with
12:29:22 13 Mr. Katz, specifically. It's possible I could have
12:29:27 14 had conversations, but I don't recall any of them.

12:29:31 15 Q. And when you invested initially, did
12:29:33 16 you understand there to be some sort of a minimum
12:29:36 17 investment -- or investment minimum?

12:29:40 18 A. Yes.

12:29:41 19 Q. And what was the investment minimum
12:29:43 20 at that time?

12:29:44 21 A. I don't recall whether it was 500,000
12:29:46 22 or a million dollars, but I think it was in that
12:29:49 23 range.

12:29:49 24 Q. And how much did you initially
12:29:52 25 invest?

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12:29:53 1 A. I don't recall whether it was 500,000
12:29:55 2 or a million.

12:29:56 3 Q. Okay. And I think you also, or your
12:29:59 4 father also opened an account as well around that
12:30:03 5 time?

12:30:03 6 A. I'm not sure when my father opened
12:30:05 7 the account. I believe it was sometime after I
12:30:08 8 opened the account.

12:30:09 9 Q. Did your father open his account
12:30:12 10 through Mr. Katz?

12:30:14 11 A. Yes. Mr. Katz you're referring to
12:30:18 12 Sterling Equities?

12:30:19 13 Q. I'm referring to Saul Katz.

12:30:22 14 A. Saul Katz provided us the opportunity
12:30:25 15 to invest in Mr. Madoff through Sterling Equities.

12:30:29 16 Q. Okay. Can you describe for me the
12:30:31 17 process of how you invested with Madoff initially
12:30:40 18 through Sterling Equities. What happened?

12:30:42 19 A. The first step was Mr. Katz suggested
12:30:44 20 to me that he could get us access, me personally
12:30:47 21 access to a closed manager, and he provided me that
12:30:52 22 opportunity and explained to me how to do it. And I
12:30:55 23 believe I either sent a check or a wire transfer to
12:30:59 24 Arthur Friedman, who was the administrator for
12:31:03 25 Sterling Equities on all of their Madoff accounts.

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12:31:07 1 Q. And were you provided with any
12:31:09 2 paperwork that you needed to fill out with respect
12:31:10 3 to opening your account?

12:31:12 4 A. I don't recall. I recall, I do
12:31:15 5 recall sending either the check or the wire, but I
12:31:18 6 don't recall filling out any paperwork.

12:31:20 7 Q. Were you provided with any literature
12:31:22 8 or any information concerning Mr. Madoff before you
12:31:25 9 invested?

12:31:25 10 A. Not to my recollection.

12:31:29 11 Q. After you sent your check to
12:31:34 12 Mr. Friedman, what happened next?

12:31:38 13 A. I don't recall whether I sent a check
12:31:39 14 or whether it was a wire transfer.

12:31:41 15 Q. Okay.

12:31:42 16 A. I believe it went to Mr. Friedman.
12:31:46 17 It may have gone to another administrator below him.
12:31:50 18 Karen Maucher was the day-to-day administrator that
12:31:54 19 I interacted with.

12:31:57 20 Q. And what happened after that?

12:31:59 21 A. I started to receive monthly
12:32:01 22 statements of my account from Sterling Equities,
12:32:05 23 from their administrative office.

12:32:07 24 Q. Okay. So the monthly account
12:32:09 25 statements you received from Sterling Equities, not

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12:32:11 1 from Madoff?

12:32:14 2 A. I don't recall whether they were sent
12:32:17 3 from Madoff Securities to me or whether they were
12:32:20 4 sent to Sterling Equities and Sterling Equities
12:32:23 5 forwarded them to me. But I do know that I received
12:32:26 6 them and the administration of it was through
12:32:28 7 Sterling Equities.

12:32:29 8 Q. And did you review these monthly
12:32:32 9 statements?

12:32:32 10 A. Yes.

12:32:34 11 Q. Did you also receive your father's
12:32:36 12 monthly statements or did they go to your father?

12:32:39 13 A. I believe that they went to my father
12:32:40 14 and I may have received a cc, a copy as well.

12:32:45 15 Q. And when you said you reviewed the
12:32:50 16 monthly statements, was it your custom to review the
12:32:53 17 statements every time you received them or was it
12:32:56 18 periodic?

12:32:57 19 A. It was on a regular basis.

12:33:05 20 Q. How did you first meet Saul Katz?

12:33:08 21 A. Saul Katz was the, I believe the
12:33:12 22 chairman of the finance committee of Glen Cove and a
12:33:17 23 member of the board of North Shore University
12:33:20 24 Hospital. The CEO, Jack Gallagher, asked me to meet
12:33:25 25 with him, Mr. Katz, and to suggest to Mr. Katz that

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12:33:28 1 he consider serving as chairman of the board of
12:33:32 2 North Shore University Hospital.

12:33:35 3 Q. And when was that?

12:33:37 4 A. I believe that was 1994.

12:33:39 5 Q. And did you meet with Mr. Katz?

12:33:42 6 A. Yes.

12:33:42 7 Q. Did you ask him to serve as chair?

12:33:45 8 A. Yes.

12:33:45 9 Q. And he said yes?

12:33:47 10 A. Yes.

12:33:52 11 Q. And I think earlier we discussed that
12:33:55 12 SAI had provided consulting services to Long Island
12:34:00 13 Jewish Health System, right?

12:34:01 14 A. That's right. And it may have been
12:34:03 15 that we started providing services in '94 and then I
12:34:06 16 actually had the first meeting with Mr. Katz in '95.
12:34:09 17 I don't recall the exact time frame. It was soon
12:34:11 18 before he became chairman.

12:34:13 19 Q. Okay. And the services that SAI
12:34:17 20 provided to Long Island Jewish, that was in
12:34:20 21 connection with the merger with North Shore; is that
12:34:25 22 right?

12:34:25 23 A. We were consultant to North Shore
12:34:29 24 University Hospital at Manhasset, and served as the
12:34:30 25 advisor to North Shore University Hospital of

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12:34:33 1 Manhasset on all of their mergers on Long Island.

12:34:33 2 Q. Okay.

12:34:36 3 A. Of which LIJ became one.

12:34:40 4 Q. So the initial relationship that you
12:34:41 5 had was with North Shore?

12:34:43 6 A. North Shore University Hospital of
12:34:45 7 Manhasset.

12:34:46 8 Q. After the merger -- well, when was
12:34:49 9 the merger between North Shore and Long Island
12:34:52 10 Jewish?

12:34:53 11 A. I don't recall the exact date. It
12:34:55 12 was sometime in the '97-'98 time frame.

12:34:59 13 Q. After the merger, did you continue to
12:35:01 14 provide services to --

12:35:02 15 A. Yes.

12:35:03 16 Q. -- Long Island -- what was the name
12:35:05 17 of the entity after they merged?

12:35:08 18 A. North Shore Long Island Jewish.
12:35:11 19 North Shore LIJ.

12:35:12 20 Q. North Shore LIJ, thank you.

12:35:16 21 Did you continue to provide -- I'll
12:35:16 22 wait till you're done.

12:35:17 23 Did you continue to provide
12:35:17 24 consulting services to North Shore LIJ after the
12:35:21 25 merger?

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12:35:22 1

A. Yes.

12:35:25 2

Q. And for how long did you provide

12:35:27 3

consulting services after the merger?

12:35:30 4

A. I believe it was for contemporaneous

12:35:36 5

time frame that I continued to be an employee for

12:35:40 6

Perot Systems, which was about a year or two. I

12:35:43 7

don't recall the exact time frame.

12:35:45 8

Q. So we're in like late '90s?

12:35:48 9

A. Late '90s.

12:35:56 10

Q. When did the idea of you partnering

12:36:03 11

with the Katz or Wilpon families first arise?

12:36:08 12

A. I believe it first arose over lunch,

12:36:13 13

a lunch that I had with Saul Katz's son, David Katz,

12:36:18 14

sometime in the either late '90s or early 2000.

12:36:25 15

Q. And who raised the issue, was it you

12:36:27 16

or was it Mr. Katz?

12:36:29 17

A. You're referring to David Katz?

12:36:30 18

Q. Yes.

12:36:32 19

A. I don't recall who did. I believe it

12:36:35 20

was David who suggested that it would make sense for

12:36:38 21

us to consider creating a company with our two

12:36:43 22

fathers.

12:36:45 23

Q. And what else did Mr. David Katz say

12:36:50 24

at that lunch concerning forming a partnership

12:36:53 25

between the two families?

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12:36:55 1 A. I recall two things that he said.
12:36:58 2 The first was the nature of our two families, how he
12:37:05 3 respected and I believe he used the word loved my
12:37:09 4 father, and how I respected and loved his father,
12:37:12 5 and how the two of us respected and loved each
12:37:18 6 other. And that it would be wonderful to be able to
12:37:21 7 work together, two fathers, two sons. That's the
12:37:24 8 first thing I recall him saying.

12:37:26 9 The second thing I recall him saying
12:37:28 10 was his concern that sometime in the future if his
12:37:37 11 father were no longer alive and his father were, in
12:37:40 12 his words, in heaven looking down on him and saw
12:37:43 13 that they had close to 100 percent of their
12:37:45 14 investable assets in one single manager, that Saul,
12:37:50 15 his father in heaven, would reprimand David for that
12:37:56 16 fact.

12:37:58 17 Q. And when you're referring to the one
12:38:00 18 single manager with close to 100 percent of the
12:38:02 19 assets, you're referring to Mr. Madoff?

12:38:05 20 A. And I believe it -- I don't know what
12:38:06 21 the phrase he used was, investable or liquid assets
12:38:09 22 or investment assets, but a substantial portion of
12:38:12 23 their assets. Yes.

12:38:16 24 Q. Yes, thank you.
12:38:20 25 What did you say in response to those

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12:38:23 1 two points?

12:38:25 2 A. On the first point, I agreed. On the
12:38:30 3 second point, I also agreed.

12:38:34 4 Q. And on those two points, were there
12:38:39 5 any other reasons that Mr. David Katz raised for
12:38:45 6 joining an investment partnership between the two
12:38:47 7 families?

12:38:48 8 A. I don't recall anything other than
12:38:49 9 those two general points.

12:38:57 10 Q. Did Mr. David Katz raise with you,
12:39:00 11 prior to that lunch, his concerns with his family
12:39:07 12 having substantially all or all of their liquid
12:39:09 13 asset investments in Madoff?

12:39:12 14 A. I don't recall a conversation prior
12:39:13 15 to that one. That's the first one I recall. It's
12:39:15 16 possible we could have had an earlier conversation,
12:39:19 17 but that's the one I recall.

12:39:23 18 Q. Before the lunch with David Katz,
12:39:25 19 this lunch that we're discussing right now, did you
12:39:30 20 come to the conclusion that you believe that the
12:39:32 21 Katz and Wilpon families had -- let me rephrase.

12:39:36 22 Before that lunch with David Katz,
12:39:39 23 did you know that the Katz and Wilpon families had
12:39:42 24 substantially all or all of their liquid assets in
12:39:45 25 Madoff?

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12:39:46 1 A. I don't believe I knew the amount of
12:39:48 2 assets they had and what percentages were with
12:39:54 3 Bernard Madoff or what percentage were managed
12:39:56 4 elsewhere with other managers at that time.

12:39:58 5 Q. So the first time you became aware of
12:40:02 6 the amount of the Katz and Wilpon investments in
12:40:04 7 Madoff was at the lunch with David Katz?

12:40:07 8 MR. GOUDISS: I object. Go ahead.

12:40:09 9 A. I'm not saying that's the first time.
12:40:11 10 That's the first time that I recall the
12:40:14 11 conversation. It's possible we had a conversation
12:40:16 12 prior to that.

12:40:18 13 Q. So what happened after this lunch
12:40:25 14 with David Katz where he first raised the issue of
12:40:29 15 the two families partnering together?

12:40:31 16 A. I'm not sure of the exact sequence of
12:40:35 17 events, but I do recall that either he had a
12:40:37 18 conversation with his father or he and I had a
12:40:39 19 conversation with his father, Mr. Saul Katz, about
12:40:44 20 what it would entail.

12:40:47 21 Q. Can you tell me what were the
12:40:52 22 substance of those discussions?

12:40:54 23 A. Generally speaking.

12:40:55 24 Q. Yes.

12:40:57 25 A. My understanding of how to conduct,

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12:41:00 1 how to create a diversified portfolio would be to do
12:41:04 2 something different than what I understood they were
12:41:06 3 doing and something different than what I was doing.
12:41:09 4 Which is that I had capital that I managed and I had
12:41:14 5 a substantial portion of my liquid assets in one
12:41:17 6 manager. And that what we would seek to do is to
12:41:20 7 diversify into ten or more managers.

12:41:23 8 Q. Let me back up before we get into
12:41:27 9 that. Before the lunch you had with David Katz
12:41:33 10 where you had the initial discussion about
12:41:34 11 partnering with the Katz and Wilpon family, did you
12:41:39 12 or members of your family jointly invest with the
12:41:43 13 Katz and Wilpon families in other investments?

12:41:48 14 A. I don't recall whether we did any
12:41:50 15 other specific investments. It's possible that we
12:41:54 16 did. We had investments at prior periods in other
12:41:59 17 investments that they made.

12:42:00 18 Q. And what investments were those?

12:42:02 19 A. When I say we, it's either me or my
12:42:06 20 family. I think it was me. I believe I made an
12:42:08 21 investment as an individual in one of their real
12:42:13 22 estate funds.

12:42:13 23 Q. One of the SAP funds?

12:42:16 24 A. I believe that's correct. I also
12:42:18 25 believe I made some small investments in some

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12:42:21 1 venture capital investments that they had.

12:42:25 2 Q. Anything else do you recall?

12:42:30 3 A. As an individual or as a firm?

12:42:33 4 Q. First as an individual.

12:42:35 5 A. As an individual, I don't recall any

12:42:37 6 other investments that I made with them.

12:42:41 7 Q. And as a firm are you referring to

12:42:43 8 SAI?

12:42:44 9 A. No.

12:42:44 10 Q. Who are you referring to?

12:42:46 11 A. SP Capital and then Sterling Stamos.

12:42:51 12 Q. Okay. And by SP Capital, the

12:42:56 13 predecessor to Sterling Stamos, correct?

12:42:58 14 A. Correct. Same firm, different name.

12:43:00 15 Q. So that's June '02 and on?

12:43:02 16 A. Yes.

12:43:03 17 Q. Okay. So, prior to June 2002, can

12:43:08 18 you recall of any other joint investments you made

12:43:13 19 with the Katz and Wilpon families?

12:43:16 20 A. I don't recall any. It's possible

12:43:18 21 that there were, but I don't recall any.

12:43:25 22 Q. How did you come to know -- how did

12:43:27 23 you -- strike that.

12:43:27 24 When did you first meet David Katz?

12:43:32 25 A. I don't recall when I first met him.

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12:43:34 1 Roughly around the same time frame that I met the
12:43:37 2 rest of Mr. Katz's family.

12:43:40 3 Q. Was this through, was it through your
12:43:42 4 work with Mr. Katz for North Shore LIJ?

12:43:47 5 A. Yes.

12:43:48 6 Q. How often did you meet with Saul Katz
12:43:55 7 with respect to the work you did for North Shore
12:43:59 8 LIJ?

12:44:00 9 A. During what time period?

12:44:01 10 Q. Take it from the beginning and then
12:44:03 11 after the merger.

12:44:04 12 MR. GOUDISS: From the time he
12:44:05 13 assumes the chairmanship?

12:44:07 14 MR. BOHORQUEZ: Yes. In '94.

12:44:10 15 A. From the time he assumed the
12:44:11 16 chairmanship until I was no longer a consultant I
12:44:15 17 would speak with or meet with Mr. Katz on a regular
12:44:17 18 basis, as often as, for some periods of time daily,
12:44:23 19 and other times weekly.

12:44:26 20 Q. And what was Mr. David Katz's role
12:44:29 21 with respect to North Shore LIJ, if any?

12:44:33 22 A. Initially or later?

12:44:35 23 Q. Initially.

12:44:36 24 A. Initially, I think he might have been
12:44:42 25 on the extended advisory board of one of the

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12:44:45 1 hospitals, Glen Cove. I think eventually he became
12:44:48 2 an affiliated advisor or board member of one of the
12:44:52 3 entities.

12:44:53 4 Q. And through the work that you did
12:44:55 5 with the hospital, that's how you got to know David
12:44:58 6 Katz as well?

12:44:58 7 A. No.

12:44:58 8 Q. Okay. So how did you get to know
12:45:01 9 David Katz?

12:45:01 10 A. On a personal basis.

12:45:04 11 Q. So, friends?

12:45:05 12 A. Yes.

12:45:06 13 Q. When did you first meet Fred Wilpon?

12:45:13 14 A. I don't recall the specific time but
12:45:14 15 sometime after, I believe, Saul Katz became chairman
12:45:19 16 of the board of North Shore University Hospital.

12:45:22 17 Q. Did Saul Katz introduce you to
12:45:25 18 Mr. Wilpon?

12:45:26 19 A. I believe so, yes.

12:45:34 20 Q. When did -- strike that.

12:45:38 21 Do you know the other Sterling
12:45:39 22 partners?

12:45:39 23 A. Some of them.

12:45:40 24 Q. Who do you know?

12:45:41 25 A. I know Arthur Friedman. I know

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12:45:44 1 Marvin Tepper. I know Tom Osterman. I can't
12:45:52 2 recall -- I know Jeff Wilpon and I know David Katz.
12:45:56 3 I don't recall the other, there's maybe one or two
12:45:59 4 other partners.

12:46:00 5 Q. Leonard Schreier?

12:46:03 6 A. I did know Leonard Schreier prior to
12:46:06 7 his death.

12:46:06 8 Q. When did you first meet Marvin
12:46:10 9 Tepper?

12:46:10 10 A. I believe around the same time that I
12:46:13 11 met Mr. Wilpon.

12:46:14 12 Q. That was sometime after Saul Katz
12:46:16 13 became chair of --

12:46:18 14 A. I believe so.

12:46:20 15 Q. And when did you first meet
12:46:23 16 Mr. Friedman?

12:46:25 17 A. I believe all contemporaneously in
12:46:27 18 the same time frame.

12:46:28 19 Q. And by all you're referring to all
12:46:30 20 the Sterling partners?

12:46:31 21 A. Correct.

12:46:35 22 Q. Did you meet Bernie Madoff before you
12:46:41 23 made any investments with his firm?

12:46:44 24 A. No.

12:46:46 25 Q. Have you ever met Bernard Madoff?

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12:46:49 1 A. Yes.

12:46:49 2 Q. When did you first meet him?

12:46:52 3 A. I believe the first time I met

12:46:54 4 Mr. Madoff was at the wedding of one of Saul's

12:46:59 5 daughters.

12:47:00 6 Q. Was that Natalie?

12:47:02 7 A. I don't know whether it was Natalie

12:47:03 8 or the other daughter.

12:47:04 9 Q. Heather, I believe?

12:47:06 10 A. I don't know whether it was Natalie's

12:47:09 11 wedding or Heather's wedding. Quite frankly, it

12:47:12 12 could have been David's wedding, but it was one of

12:47:15 13 the weddings. I think it was one of the daughters.

12:47:18 14 Q. When was that?

12:47:20 15 A. Sometime after I made an investment,

12:47:22 16 and I don't recall when.

12:47:23 17 Q. Was it before or after Sterling

12:47:27 18 Stamos was formed in June of '02?

12:47:29 19 A. I don't recall. I believe it was

12:47:35 20 after.

12:47:37 21 Q. And did you -- what did you talk

12:47:39 22 about when you met him?

12:47:41 23 A. I do recall the conversation.

12:47:43 24 Q. Describe to me what you discussed at

12:47:46 25 the conversation.

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12:47:47 1 A. What I recall is, and the only thing
12:47:49 2 I know about time frame is it was after my brother
12:47:53 3 had become an investor. What I said to Mr. Madoff
12:47:56 4 was my brother Basil is an infectious disease
12:48:02 5 specialist and thanks to his investments with you,
12:48:05 6 Mr. Madoff, he is able to take care of homeless
12:48:08 7 patients. I just want to tell you thank you.

12:48:12 8 Q. And what did Mr. Madoff say in
12:48:14 9 response?

12:48:14 10 A. He said, thank you very much, I
12:48:17 11 appreciate that. He said, I hear that story very
12:48:20 12 often.

12:48:20 13 Q. So did you discuss anything else with
12:48:22 14 Mr. Madoff at that time?

12:48:23 15 A. At that time I don't recall anything
12:48:25 16 else.

12:48:26 17 Q. After you met him at the wedding of
12:48:29 18 one of the Wil --

12:48:31 19 A. One of the Katz's.

12:48:33 20 Q. -- one of the Katz's children, did
12:48:38 21 you meet him in person again any other time?

12:48:40 22 A. Yes.

12:48:40 23 Q. When was the next time that you met
12:48:42 24 him?

12:48:43 25 A. I don't recall when the next time was

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12:48:45 1 but I recall another time that I met him.

12:48:47 2 Q. Tell me about that other time that
12:48:49 3 you recall meeting him.

12:48:50 4 A. I remember meeting him at a dinner
12:48:53 5 held at Ezra Merkin's house. I believe it was at
12:49:00 6 Shabbat dinner on a Friday evening.

12:49:03 7 Q. How long after the wedding when you
12:49:09 8 first met him was this dinner?

12:49:11 9 A. I don't recall.

12:49:12 10 Q. Who was at the dinner?

12:49:14 11 A. People that I remember were Ezra
12:49:17 12 Merkin, his wife, Mr. Madoff, I believe Mr. Merkin's
12:49:21 13 children and I believe that Mr. Madoff's wife was
12:49:24 14 there as well.

12:49:27 15 Q. And did Ezra Merkin invite you to the
12:49:33 16 dinner?

12:49:34 17 A. Yes.

12:49:34 18 Q. Were any members of the Katz or
12:49:36 19 Wilpon family at the dinner?

12:49:40 20 A. Not to my recollection.

12:49:43 21 Q. At the dinner that you had with
12:49:45 22 Mr. Madoff and the Merkin family, did you discuss
12:49:49 23 any topics with respect to Madoff's investment
12:49:53 24 advisory business?

12:49:54 25 A. Yes.

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12:49:55 1 Q. What did you discuss at the dinner?

12:49:59 2 A. With whom?

12:49:59 3 Q. Well, let's start with Mr. Madoff.

12:50:03 4 A. That's the only conversation I recall

12:50:07 5 about -- that was with Mr. Madoff.

12:50:09 6 Q. Okay. And what did you guys talk

12:50:11 7 about?

12:50:12 8 A. I remember expressing to him my

12:50:24 9 understanding of his investment strategy.

12:50:29 10 Q. The so-called split strike strategy?

12:50:33 11 A. Yes.

12:50:33 12 Q. Before you had the discussion with

12:50:35 13 Mr. Madoff, what was your understanding of the split

12:50:39 14 strike strategy?

12:50:41 15 A. The same as it was after I had...

12:50:46 16 Q. Okay. What was your understanding at

12:50:48 17 that time?

12:50:49 18 A. Are you asking me what I said to him

12:50:51 19 or asking me what my understanding was?

12:50:53 20 Q. Is there a difference?

12:50:56 21 A. I don't think so.

12:50:56 22 Q. Okay.

12:50:59 23 A. Just want to be specific. Here's

12:51:01 24 what I remember saying to him.

12:51:02 25 Q. Okay.

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12:51:05 1 A. My understanding is you buy a set of
12:51:08 2 stocks and you buy a put and sell a call, and I
12:51:17 3 understand that. And I think that's remarkable, the
12:51:20 4 way you've been so successful with doing that. What
12:51:23 5 I don't understand is how do you know when to put
12:51:26 6 that trade on? That's what I said to him.

12:51:31 7 Q. You're referring to the market timing
12:51:33 8 aspect of the strategy?

12:51:35 9 A. Correct.

12:51:37 10 Q. Why did you ask him that question?

12:51:42 11 A. Because I was curious. I'm not sure
12:51:45 12 if I had been -- if I was still an investor at that
12:51:48 13 time or if I had stopped being an investor. But I
12:51:51 14 had been an investor of his, on an individual basis,
12:51:54 15 for several years, and I was curious how he did it.

12:51:57 16 Q. So you understood the options,
12:52:03 17 arbitrage aspect of it?

12:52:04 18 A. In concept.

12:52:05 19 Q. In concept. What you didn't
12:52:07 20 understand was the market timing aspect of the
12:52:09 21 strategy?

12:52:12 22 A. Correct.

12:52:12 23 Q. And what did Mr. Madoff say in
12:52:14 24 response?

12:52:17 25 A. In general I recall him saying that

12:52:21 1 the answer to that is my own algorithm, which is
12:52:27 2 confidential.

12:52:27 3 Q. So he had, another word for that
12:52:30 4 would be like a black box, if you will?

12:52:33 5 A. Yes.

12:52:35 6 Q. Did you ask him again to tell you
12:52:38 7 what the algorithm was?

12:52:43 8 A. I don't recall -- I don't believe so.

12:52:45 9 Q. Just so I understand, he told you
12:52:46 10 that the market timing was the result of an
12:52:49 11 algorithm that he had that was confidential, that he
12:52:52 12 would not disclose it to you?

12:52:54 13 A. That's correct.

12:52:54 14 Q. And what did you say in response?

12:52:58 15 A. I don't recall any response. It was
12:53:00 16 a polite dinner conversation.

12:53:03 17 Q. When you were having this discussion
12:53:06 18 with Mr. Madoff about his split strike strategy, was
12:53:10 19 Mr. Merkin in the room?

12:53:14 20 A. I believe he was in the same room.
12:53:15 21 He might have been in the other room. To be clear,
12:53:18 22 it was after dinner, so we were probably sitting in
12:53:22 23 the living room somewhere.

12:53:25 24 Q. Was Mr. Merkin a part of this
12:53:28 25 discussion in any way?

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12:53:29 1 A. Not to my recollection. He may have
12:53:35 2 overheard it, but I don't recall if he was part of
12:53:37 3 this discussion.

12:53:38 4 Q. And what was your reaction to
12:53:42 5 Mr. Madoff's response that his market timing
12:53:45 6 component of a split strike strategy was a black
12:53:49 7 box?

12:53:50 8 A. At that time, which I believe was
12:53:53 9 early on in the development of our firm, that was a
12:53:57 10 common answer to a number of managers that we either
12:54:01 11 invested with or considered investing with. For
12:54:04 12 example, D.E. Shaw had a quantitative black box that
12:54:08 13 people invested in.

12:54:11 14 Q. So, when he told you that he had a
12:54:13 15 black box component to his strategy, your reaction
12:54:17 16 was that that was similar to other responses you'd
12:54:22 17 gotten from other market managers at that time,
12:54:25 18 investment managers at that time?

12:54:26 19 A. I don't believe he used the phrase
12:54:28 20 "black box." I believe he used the phrase
12:54:31 21 "algorithm."

12:54:32 22 The answer to that is that was
12:54:34 23 similar to, yes. Similar.

12:54:42 24 Q. Thank you. And you can't recall if
12:54:44 25 you had this discussion with Mr. Madoff before or

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12:54:47 1 after you withdrew your money from the Madoff
12:54:52 2 investment firm?

12:54:55 3 A. I don't recall whether it was before
12:54:56 4 or after.

12:54:58 5 Q. Why did you withdraw your money from
12:55:03 6 Madoff?

12:55:04 7 A. For two reasons. One is to cover my
12:55:07 8 living expenses. Because for the first -- well,
12:55:10 9 lifestyle. For the first two years of the firm I
12:55:13 10 received no salary. So I had to withdraw capital
12:55:16 11 from my most liquid account to cover living
12:55:20 12 expenses. My wife and I bought a house, a
12:55:23 13 condominium, and had to cover our living costs.

12:55:26 14 And the second reason was I withdrew
12:55:29 15 the final amount of capital I had with him I believe
12:55:32 16 the end of 2004 because as part of our process to
12:55:36 17 become a registered investment advisor I made the
12:55:39 18 decision, made the recommendation and then the
12:55:41 19 decision that all of the operating partners would
12:55:44 20 have 100 percent of our investable assets in our own
12:55:47 21 funds. We would not have any investments outside of
12:55:51 22 the firm. That would be late 2004. But I believe I
12:55:55 23 withdrew the majority, significant majority of my
12:55:59 24 assets in '03 to cover living expenses and the
12:56:04 25 purchase of a house, condominium.

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12:56:08 1 Q. After you had this discussion with
12:56:10 2 Mr. Madoff at dinner at the Merkins, did you share
12:56:16 3 that conversation with anyone?

12:56:20 4 A. I'm sure I shared it with some
12:56:23 5 members of my family, and possibly with Mr. Katz.

12:56:26 6 Q. What members of your family did you
12:56:28 7 share it with?

12:56:29 8 A. I believe my wife.

12:56:30 9 Q. Did you share it with your father?

12:56:33 10 A. I possibly shared it with my father.

12:56:36 11 Q. What about your brothers, Basil and
12:56:39 12 Chris?

12:56:39 13 A. Possibly my brothers Basil and Chris
12:56:42 14 as well because we're very close and spoke often.

12:56:45 15 Q. Did you raise this discussion you had
12:56:49 16 with Mr. Madoff with anyone at Sterling Stamos?

12:56:53 17 A. I don't recall the specific
12:56:55 18 conversation with anyone at Sterling Stamos, but it
12:56:58 19 would have been in my normal course of events to
12:57:02 20 discuss this with -- a conversation with a fund,
12:57:04 21 with any manager with my investment team, so I
12:57:07 22 assume I probably did.

12:57:09 23 Q. And who from your investment team did
12:57:10 24 you probably have that discussion with?

12:57:12 25 MR. GOUDISS: I object. Go ahead.

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12:57:15 1 A. I don't recall the specific
12:57:18 2 conversation, so it could have been any member of
12:57:20 3 the team.

12:57:20 4 Q. At that time who were the members of
12:57:22 5 your team?

12:57:23 6 A. The two members that were most active
12:57:25 7 I believe at that time were Kevin Okimoto and Ashok
12:57:29 8 Chachra.

12:57:30 9 Q. Those are the two founding partners
12:57:32 10 of Sterling Stamos?

12:57:33 11 A. Yes.

12:57:33 12 Q. From the Stamos side.

12:57:37 13 A. Yes.

12:57:42 14 Q. With respect to Mr. Katz, you said
12:57:46 15 you raised the discussion you had with Mr. Madoff
12:57:48 16 with Mr. Katz, are you referring to Saul Katz or
12:57:50 17 David Katz?

12:57:52 18 A. Saul Katz, I believe.

12:57:53 19 Q. And what did you tell Saul Katz about
12:57:55 20 your discussion with Mr. Madoff?

12:57:57 21 A. First of all, I don't recall a
12:57:58 22 specific conversation with Mr. Katz. I think what I
12:58:02 23 believe I said is that I believe I spoke with him
12:58:06 24 about this, because it was the kind of thing I would
12:58:10 25 share with him.

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12:58:11 1 Q. But you don't recall -- do you recall
12:58:13 2 a specific discussion you had with him about that
12:58:15 3 particular dinner conversation you had with
12:58:17 4 Mr. Madoff?

12:58:18 5 A. Not a specific one.

12:58:21 6 Q. After the dinner conversation you had
12:58:25 7 with Mr. Madoff at the Merkins, what was the next
12:58:31 8 time you met with Mr. Madoff in person?

12:58:35 9 A. I don't recall ever meeting with
12:58:38 10 Mr. Madoff, in the sense of a meeting. I may have
12:58:41 11 seen him at other events.

12:58:43 12 Q. All right, let me rephrase the
12:58:46 13 question.

12:58:47 14 After the dinner you had with
12:58:50 15 Mr. Madoff at the Merkins, when was the next time
12:58:53 16 that you saw Mr. Madoff in person?

12:58:55 17 A. The only other one or two times that
12:58:57 18 I recall ever seeing Mr. Madoff was once when I
12:59:01 19 believe Mr. Merkin and/or Mr. Madoff were receiving
12:59:05 20 honorary degrees at Yeshiva University, and I was in
12:59:09 21 attendance. And I believe that I may have met him
12:59:11 22 at the reception, shook his hand.

12:59:16 23 Q. Did you have any discussions with
12:59:18 24 him?

12:59:18 25 A. Not that I can recall.

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12:59:19 1 I believe it's possible that I also
12:59:20 2 met him at an event that Mr. Wilpon hosted in New
12:59:31 3 York City for a musical. It would have been, again,
12:59:35 4 an in-the-hallway kind of handshake. That's all I
12:59:38 5 can recall.

12:59:38 6 Q. And no substantive discussion of any
12:59:41 7 kind?

12:59:42 8 A. No.

12:59:42 9 Q. Now, we've walked --

12:59:50 10 A. I apologize. I do remember one other
12:59:51 11 time.

12:59:52 12 I believe that Mr. Wilpon or Mr. Katz
12:59:54 13 called me to ask if Mr. Madoff or Mr. Madoff's wife
01:00:03 14 could get a medical referral from my wife, who is a
01:00:07 15 cancer specialist. And I don't know whether that
01:00:12 16 resulted in a telephone call from one of the Madoffs
01:00:16 17 to my family and whether I picked it up or not.
01:00:19 18 That's the only other time I can remember.

01:00:23 19 Q. In one of the literally thousands of
01:00:29 20 documents that you have produced to us, I saw a,
01:00:32 21 there's an August '04 meeting that was scheduled and
01:00:37 22 then cancelled where I believe Mr. Madoff was in
01:00:39 23 attendance -- was going to attend. Does that jar
01:00:43 24 your recollection in any way?

01:00:44 25 A. Yes, it does.

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01:00:46 1 Q. Okay. Why were you scheduled to meet
01:00:49 2 with Mr. Madoff in August of '04?

01:00:52 3 A. To the best of my recollection, that
01:00:54 4 coincides with the time frame that we were trying to
01:00:57 5 figure out what, if any, concerns he would have and
01:01:02 6 Mr. Katz would have with us becoming a registered
01:01:05 7 investment advisor. I'm not certain of that fact.
01:01:08 8 That's what it seems, that's what my recollection
01:01:10 9 suggests to me.

01:01:12 10 Q. That would be with respect to the
01:01:13 11 matters we discussed this morning?

01:01:15 12 A. Correct.

01:01:16 13 Q. Concerning the registering as an
01:01:20 14 investment advisor. Okay.

01:01:24 15 Who initially scheduled that meeting?

01:01:27 16 A. I don't know.

01:01:29 17 Q. But the meeting didn't happen?

01:01:31 18 A. Not to my knowledge.

01:01:33 19 Q. Did you try to reschedule the meeting
01:01:36 20 with Mr. Madoff?

01:01:37 21 A. I don't believe so.

01:01:40 22 Q. Did you have, you personally, did you
01:01:44 23 have any phone conversations or conference calls
01:01:47 24 with Mr. Madoff concerning Sterling Stamos' --
01:01:52 25 whether Sterling Stamos should register as an

PETER S. STAMOS - August 19, 2010

01:01:55 1 investment advisor?

01:01:56 2 A. No. Not to my recollection.

01:01:58 3 Q. So what happened after this August
01:02:02 4 '04 meeting was cancelled?

01:02:04 5 A. Can you be more specific?

01:02:06 6 Q. You say you believe that the August
01:02:07 7 '04 meeting, the one that was essentially cancelled,
01:02:12 8 may have had something to do with the concerns that
01:02:15 9 Mr. Katz had with Sterling Stamos registering as an
01:02:21 10 investment advisor because of his investments with
01:02:24 11 Madoff.

01:02:25 12 A. Yes.

01:02:25 13 Q. So, what I'm asking then is, if this
01:02:29 14 matter was of substantial -- was of concern to you
01:02:32 15 and Mr. Katz, and you had planned a meeting with
01:02:36 16 Mr. Madoff about it and that meeting was cancelled,
01:02:39 17 did you do -- did you or anyone at Sterling Stamos
01:02:43 18 do anything after that?

01:02:44 19 A. Yes. I believe we resolved the
01:02:45 20 issues, such that Mr. Katz was then comfortable and
01:02:49 21 no longer needed the meeting.

01:02:52 22 Q. And when you referenced your
01:02:56 23 resolution of the issues, you're referring to the
01:02:58 24 matters that you testified to this morning?

01:03:01 25 A. Correct.

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01:03:05 1 Q. Now, we walked through the various
01:03:09 2 in-person meetings that you had with Mr. Madoff.

01:03:12 3 A. Yes.

01:03:12 4 Q. Did you have any phone discussions
01:03:16 5 with Mr. Madoff over the period that you knew him?

01:03:22 6 A. Not to my recollection.

01:03:41 7 MR. BOHORQUEZ: Let's take a minute.
01:03:48 8 Why don't we go off the record.

01:03:51 9 THE VIDEOGRAPHER: Going off the
01:03:52 10 record, the time is 1:04. This ends tape number 2.

01:04:15 11 (Luncheon recess taken.)

01:04:15 12 * * *

01:56:58 13
01:56:58 14 THE VIDEOGRAPHER: We are back on the
01:57:00 15 record. The time is 1:57. This is tape number 3.

01:57:05 16 BY MR. BOHORQUEZ:

01:57:06 17 Q. Good afternoon, Mr. Stamos.

01:57:08 18 A. Good afternoon.

01:57:10 19 Q. Couple of quick follow-up questions
01:57:13 20 about some of the matters we discussed this morning.

01:57:17 21 We discussed an August 2004 meeting
01:57:21 22 that was scheduled with Mr. Madoff that was then
01:57:24 23 cancelled. Do you recall that?

01:57:26 24 A. Do I recall the discussion? Yes.

01:57:28 25 Q. Okay. Why was that meeting

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01:57:30 1 cancelled?

01:57:31 2 A. I don't know.

01:57:32 3 Q. You don't know or you don't recall?

01:57:36 4 A. I don't recall that I ever knew.

01:57:44 5 Q. Both, I guess.

01:57:46 6 A. Yeah.

01:57:47 7 Q. And with respect to the issue as to
01:57:55 8 whether Sterling Stamos should register as an
01:57:59 9 investment advisor, did you think it was odd that
01:58:02 10 Madoff had concerns with Saul Katz having to
01:58:07 11 disclose his investments or business relationship
01:58:13 12 with Madoff if Sterling Stamos were to register as
01:58:19 13 the resident advisor?

01:58:19 14 MR. GOUDISS: I object, but go ahead.

01:58:21 15 A. I don't understand how to answer the
01:58:23 16 question odd, the word "odd." What do you mean by
01:58:26 17 odd?

01:58:27 18 Q. What do you understand the word "odd"
01:58:29 19 to mean?

01:58:30 20 A. Do you mean out of the ordinary?

01:58:31 21 Q. That's one way to define it.

01:58:34 22 A. I did not consider it out of the
01:58:37 23 ordinary.

01:58:37 24 Q. That Mr. Madoff had concerns with
01:58:40 25 Saul Katz having to disclose his investments with

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01:58:44 1 Madoff?

01:58:45 2 MR. GOUDISS: I object. Go ahead.

01:58:46 3 A. To be clear, my understanding of what

01:58:49 4 Mr. Katz said to me was that he was concerned about

01:58:53 5 his having to disclose his investments and other

01:58:58 6 business relationships with Mr. Madoff.

01:59:01 7 Q. And did you find that odd in any way

01:59:05 8 that Mr. Katz had any concerns with having to

01:59:08 9 disclose his investments or business relationships

01:59:11 10 with Mr. Madoff?

01:59:12 11 A. What I don't understand is "odd in

01:59:14 12 any way." If you could describe what you mean by

01:59:16 13 that, I can answer the question.

01:59:21 14 Q. Did Mr. Saul Katz -- why did Mr. Saul

01:59:33 15 Katz -- did Mr. Saul Katz tell you why he wanted to

01:59:37 16 keep his investments with Madoff confidential?

01:59:42 17 MR. GOUDISS: I object. Go ahead.

01:59:44 18 A. I can tell you what I recall he said

01:59:46 19 to me. I don't know his reasons why.

01:59:51 20 Q. And what did he say to you?

01:59:53 21 MR. GOUDISS: I object. Go ahead.

01:59:54 22 Tell him again.

01:59:57 23 A. I believe that what Mr. -- or what I

01:59:59 24 recall Mr. Katz expressing is concern about

02:00:03 25 confidentiality and privacy.

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02:00:10 1 Q. Did he explain why he didn't -- did
02:00:13 2 he explain to you why he did not want to disclose
02:00:16 3 his investments with Madoff?

02:00:18 4 A. I don't recall his explanation,
02:00:19 5 anything beyond privacy and confidentiality.

02:00:24 6 Q. And what did he tell you about his
02:00:26 7 concerns with confidentiality and privacy with
02:00:28 8 respect to his Madoff investments?

02:00:31 9 MR. GOUDISS: I object. Go ahead.

02:00:34 10 A. I believe that's the only thing I
02:00:36 11 recall is that Mr. Madoff is -- wants our
02:00:41 12 relationship private and confidential.

02:00:44 13 Q. And did he tell you why Mr. Madoff
02:00:46 14 wanted his relationship with Mr. Katz confidential?

02:00:50 15 A. I don't recall him ever explaining to
02:00:52 16 me why, then in fact that's one of the things that
02:00:58 17 we tried to determine. Why that was an issue.

02:01:03 18 Q. And why did you try to determine as
02:01:05 19 to whether that was an issue?

02:01:07 20 A. So that we could register as an
02:01:09 21 investment advisor.

02:01:19 22 Q. Did anyone at Sterling Stamos ever
02:01:22 23 express to you or raise -- let me rephrase it.

02:01:28 24 Did anyone at Sterling Stamos ever
02:01:31 25 raise any questions with the fact that Madoff wanted

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02:01:35 1 to keep his business relationship with Saul Katz
02:01:39 2 secret?

02:01:39 3 MR. GOUDISS: I object. Go ahead.

02:01:41 4 A. I don't recall any specific
02:01:45 5 conversations about that with anyone in the firm, if
02:01:48 6 that's what you're referring to.

02:01:50 7 Q. That is what I'm referring to. No
02:01:52 8 specific discussions whatsoever?

02:01:55 9 A. I don't recall any specific
02:01:56 10 discussions about -- well, rephrase the question
02:02:01 11 because I'm not sure I understood the question.

02:02:04 12 Q. Did anyone at Sterling Stamos ever
02:02:09 13 raise any issues or concerns with the fact that
02:02:15 14 Madoff wanted to keep his relationship with Saul
02:02:19 15 Katz secret and confidential?

02:02:22 16 A. I don't believe anyone said secret.
02:02:25 17 I believe the discussion was about confidentiality
02:02:27 18 and privacy. And I do recall general conversations
02:02:31 19 about understanding that that was the nature of
02:02:36 20 Mr. Madoff's investment business, that it was highly
02:02:39 21 confidential, highly private. That it was a private
02:02:44 22 club that you were only invited into, difficult to
02:02:48 23 get access to and the like. So that's why we had to
02:02:50 24 potentially deal with this issue, if Mr. Katz had to
02:02:54 25 disclose a lot of information. If we became

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02:02:59 1 registered.

02:02:59 2 Q. And did the fact that the nature of
02:03:01 3 Mr. Madoff's investment business was, you said
02:03:08 4 highly private, did that concern you in any way?

02:03:12 5 A. It was my understanding at that time
02:03:16 6 that that was the nature of many hedge fund
02:03:19 7 investors. The most exclusive, hard-to-get access
02:03:23 8 to investors were, generally speaking, hard to get
02:03:26 9 access to, highly private, highly confidential.

02:03:32 10 Q. Did any other investors in Sterling
02:03:35 11 Stamos ever raise any concerns with having to
02:03:40 12 disclose their relationship or investments with
02:03:44 13 Madoff if Sterling Stamos were to register as an
02:03:48 14 investment advisor?

02:03:49 15 A. I don't recall any conversations like
02:03:50 16 that.

02:03:51 17 Q. So as far as you recall, the only
02:03:53 18 investor in Sterling Stamos who raised concerns with
02:03:57 19 having to disclose their Madoff investments if
02:04:01 20 Sterling Stamos were to register as an investment
02:04:04 21 advisor was Saul Katz?

02:04:05 22 A. To be specific, Sterling Equities,
02:04:07 23 and those set of partners who were part owners of
02:04:11 24 our business.

02:04:12 25 Q. So the Sterling Equities and Sterling

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02:04:15 1 partners as a whole had raised the issue of having
02:04:18 2 to disclose their investments with Madoff if
02:04:21 3 Sterling Stamos were to register as an investment
02:04:23 4 advisor?

02:04:24 5 MR. GOUDISS: I object. Go ahead.

02:04:26 6 A. I believe I answered, through
02:04:29 7 Mr. Katz.

02:04:29 8 Q. Okay. Thank you.

02:04:37 9 Did you have any discussions with
02:04:39 10 David Katz concerning whether Sterling Stamos should
02:04:42 11 register as an investment advisor?

02:04:45 12 A. I may have but I don't recall them.

02:04:47 13 Q. Did you have any discussions with
02:04:49 14 Fred Wilpon as to whether Sterling Stamos should
02:04:52 15 register as an investment advisor?

02:04:58 16 A. I may have, but I don't recall.

02:05:04 17 Q. Did you have any discussions with
02:05:06 18 David Katz or Fred Wilpon concerning Madoff's
02:05:12 19 concern that if Sterling Stamos were to register as
02:05:16 20 an investment advisor Sterling Equities or the
02:05:19 21 Sterling partners would have to disclose their
02:05:22 22 relationship with Madoff?

02:05:24 23 A. I don't recall having that
02:05:25 24 conversation with Fred Wilpon or David Katz. I do
02:05:28 25 recall having a conversation like that either

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02:05:31 1 directly with Saul or through my staff, with Saul
02:05:36 2 Katz.

02:05:41 3 Q. Earlier this morning we discussed, or
02:05:46 4 you testified to receiving monthly statements
02:05:50 5 concerning your individual Madoff account, right?

02:05:53 6 A. Yes.

02:05:54 7 Q. Okay. I believe you also testified
02:05:57 8 that you reviewed these statements regularly; is
02:06:00 9 that right?

02:06:01 10 A. Yes.

02:06:01 11 Q. When you reviewed your monthly Madoff
02:06:04 12 statements, what was the purpose of that review?

02:06:08 13 A. To see the amount of return that had
02:06:10 14 been generated in the prior month.

02:06:14 15 Q. And when you -- were there any other
02:06:18 16 reasons to review the statements?

02:06:20 17 A. Over time I became more interested in
02:06:22 18 the set of investments and how they were being
02:06:26 19 generated.

02:06:28 20 Q. Did you review the statements to try
02:06:31 21 to ascertain Madoff's investment strategy?

02:06:36 22 A. To some extent, yes.

02:06:38 23 Q. And can you explain to me how you did
02:06:43 24 that?

02:06:46 25 A. Yes.

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02:06:48 1 Q. Can you please do it for me now?

02:06:50 2 A. Generally speaking, I would look at
02:06:52 3 the statement, look at the dates that he went into
02:06:55 4 the market, and the dates that he came out of the
02:06:57 5 market. Then periodically I would look to my review
02:07:02 6 of the equity markets on whatever investment
02:07:09 7 register I had to see if that's a period of time
02:07:14 8 which the market went up, and to look at when the
02:07:19 9 puts and the calls were placed.

02:07:21 10 Q. And what were your conclusions after
02:07:23 11 reviewing the statements as you just described?

02:07:27 12 MR. GOUDISS: I object. Go ahead.

02:07:29 13 A. My conclusion was that the investment
02:07:33 14 returns were a footing, month by month, to what I
02:07:37 15 expected. Footing is probably a general word, but
02:07:42 16 they were accurate.

02:07:45 17 Q. What do you mean by they were
02:07:47 18 accurate? I'm sorry, I don't understand.

02:07:50 19 A. That if, for example, the funds were
02:07:54 20 up two percent, it looked that he had entered the
02:07:59 21 market and exited the market with a two percent
02:08:02 22 gain, at a time when the market went up.

02:08:04 23 Q. So that his gain and the market
02:08:08 24 correlated to a certain extent?

02:08:10 25 A. Absent the put and call cost. Or he

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02:08:12 1 was in treasuries.

02:08:18 2 Q. Did you reach any other conclusions
02:08:22 3 after reviewing your monthly Madoff statements?

02:08:25 4 A. Not that I can recall.

02:08:31 5 Q. Did you notice when reviewing your
02:08:34 6 monthly statements that the returns were consistent?

02:08:39 7 A. Month-to-month?

02:08:40 8 Q. Yes, month-to-month.

02:08:42 9 A. Yes.

02:08:43 10 Q. Did there ever come a time when the
02:08:48 11 monthly returns that you reviewed dropped?

02:08:53 12 A. Yes.

02:08:55 13 Q. Were the returns -- were the returns
02:09:05 14 ever negative returns?

02:09:08 15 A. I recall some negative months.

02:09:10 16 Q. You do recall some negative months?

02:09:13 17 A. I believe so.

02:09:14 18 Q. And how often do you recall seeing a
02:09:17 19 negative return?

02:09:18 20 A. I don't recall. But I recall, to be
02:09:22 21 clear, either negative months or months that were
02:09:25 22 substantially less than the market's appreciation
02:09:28 23 that month.

02:09:30 24 Q. You do not recall specific instances?

02:09:34 25 A. I can't -- I don't recall. It's many

02:09:37 1 years ago; I don't recall the dates.

02:09:40 2

02:09:45 3

02:09:49 4

02:09:52 5

02:09:54 6

02:09:58 7

02:09:59 8

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REDACTED

Q. And then Saul Katz is on this list of advisors. We discussed earlier this morning that Saul Katz gave you -- provided advice on which firm -- managing, what management funds to invest in; is that right?

MR. GOUDISS: I object. Go ahead.

A. I believe that what I said was that Mr. Katz introduced us to potential managers.

Q. Did Mr. Saul Katz ever provide any counsel or advice as to what managers to invest in?

A. Generally speaking at that time, I believe the answer to that would be yes.

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02:12:05 1 Q. Other than providing information as
02:12:09 2 to what managers to invest in, did Mr. Saul Katz
02:12:12 3 provide any other information concerning investing?

02:12:18 4 A. Can you be more clear about what you
02:12:20 5 mean by information?

02:12:26 6 Q. What investment advice did Saul Katz
02:12:31 7 provide you at this point in time?

02:12:34 8 A. I can think of an example of the kind
02:12:38 9 of advice that he gave me.

02:12:39 10 Q. Okay. Please give me that example.

02:12:41 11 A. One example that I recall was his
02:12:43 12 advice to look for managers who hit, in his words,
02:12:46 13 singles and doubles, not triples and home runs, for
02:12:50 14 investors who generated stable, consistent returns.

02:12:56 15 Q. Did he provide you any other advice?

02:13:02 16 A. I can't recall the specific advice
02:13:04 17 that he provided me back in 2002 -- or '4.

02:13:10 18 Q. '4. At this time in 2004, how would
02:13:13 19 you characterize Mr. Katz's involvement in the
02:13:16 20 investment aspect of Sterling Stamos?

02:13:19 21 A. Minimally, relatively minimal.

02:13:23 22 Q. Other than the factors that we
02:13:25 23 discussed earlier?

02:13:26 24 A. Other than periodic introductions and
02:13:29 25 reviewing of his own investment portfolio, by that

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02:13:33 1 time his involvement in the investment process was
02:13:35 2 fairly minimal.

02:13:36 3 Q. Was his involvement in the investment
02:13:38 4 process more than that at any time?

02:13:42 5 A. Yes.

02:13:42 6 Q. And when was that?

02:13:44 7 A. When we first launched the firm.

02:13:47 8 Q. And what was Saul Katz's involvement
02:13:49 9 in the investment process when you first launched
02:13:52 10 the firm?

02:13:54 11 A. He was, I would say highly involved
02:13:55 12 for the first three months.

02:13:57 13 Q. And can you describe his involvement
02:13:58 14 in the first three months?

02:14:00 15 A. Yes. He, and his partners, provided
02:14:04 16 the primary vast majority of the initial capital,
02:14:09 17 and in some of those investments, some of the
02:14:12 18 capital that he provided with us were in-kind
02:14:15 19 investments, in the names of managers that he prior
02:14:19 20 held.

02:14:19 21 Q. Okay.

02:14:20 22 A. So, in that context he introduced us
02:14:22 23 to those managers.

02:14:27 24 Q. What other involvement did he have,
02:14:30 25 did Mr. Saul Katz have during those first three

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02:14:33 1

months?

02:14:34 2

A. He was highly involved in the

02:14:36 3

decision-making about the setting up of the

02:14:39 4

business.

02:14:39 5

Q. What do you mean by that, by the

02:14:41 6

setting up of the business?

02:14:43 7

A. What office space we would use, for

02:14:45 8

example, what our cost structure would be, how much

02:14:50 9

we should pay for employees, how many employees we

02:14:55 10

should have.

02:14:55 11

Q. Anything else?

02:15:02 12

A. Just general advice like that.

02:15:04 13

That's all I can recall.

02:15:06 14

Q. At the beginning, the inception of

02:15:12 15

Sterling Stamos in June of '02, what was David

02:15:15 16

Katz's role?

02:15:18 17

A. I would say similar to Saul's, but as

02:15:21 18

a back seat to Saul. In other words, he would

02:15:23 19

attend the same meetings and would occasionally make

02:15:27 20

comments as well.

02:15:28 21

Q. Did David Katz ever manage any of the

02:15:33 22

funds?

02:15:35 23

A. Yes.

02:15:36 24

Q. Tell me about the funds that David

02:15:38 25

Katz managed, for Sterling Stamos.

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02:15:44 1 A. Well, I recall for a brief period of
02:15:47 2 time that he managed a small portion of capital in a
02:15:50 3 trading account that we set up on our behalf.

02:15:54 4 Q. Was that SP Trading?

02:15:56 5 A. I believe that was the name, SP
02:15:58 6 Trading.

02:15:58 7 Q. And for how long did David Katz
02:16:01 8 manage the SP Trading fund?

02:16:03 9 A. I don't recall the exact amount of
02:16:04 10 time. I believe it was somewhere between a year to
02:16:08 11 18 months. It could have been less, could have been
02:16:11 12 six months.

02:16:12 13 Q. Okay. Do you recall why he stopped?

02:16:14 14 A. Yes.

02:16:15 15 Q. Why was that?

02:16:16 16 A. We asked him to stop.

02:16:18 17 Q. Why did you ask him to stop?

02:16:19 18 A. Because he had a drawdown that was
02:16:22 19 outside the range of volatility that we felt
02:16:25 20 comfortable with.

02:16:26 21 Q. What do you mean by a drawdown?

02:16:29 22 A. A negative month.

02:16:30 23 Q. I see.

02:16:34 24 Did Saul Katz ever manage any
02:16:36 25 Sterling Stamos funds?

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02:16:39 1 A. Not to my recollection.

02:16:42 2 Q. If we wanted to know whether Saul
02:16:45 3 Katz, or if you wanted to know whether Saul Katz had
02:16:48 4 managed any Sterling Stamos fund, are there any
02:16:51 5 records or documents that you would review to
02:16:52 6 determine that?

02:16:55 7 A. I don't recall any documents that
02:16:57 8 would suggest that.

02:17:02 9 Q. Do you have documents that identify
02:17:06 10 who manages what funds?

02:17:07 11 A. Yes.

02:17:08 12 Q. So if you wanted to know you could
02:17:10 13 review documents identifying the fund managers; is
02:17:14 14 that right?

02:17:15 15 A. I believe we have records going back
02:17:16 16 since inception.

02:17:18 17 Q. Okay. Other than the SP Trading
02:17:22 18 fund, did David Katz manage any other funds for
02:17:26 19 Sterling Stamos?

02:17:26 20 A. Not to my recollection.

02:17:48 21 Q. Before partnering with Sterling
02:17:50 22 Stamos -- or with Sterling, in forming Sterling
02:17:54 23 Stamos, in June of '02 when you formed the firm, did
02:17:58 24 you do any diligence of Sterling before forming the
02:18:02 25 partnership?

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02:18:03 1 A. Are you referring to due diligence?

02:18:06 2 Q. Yes.

02:18:07 3 A. I don't recall doing any due
02:18:09 4 diligence of Sterling other than having gotten to
02:18:13 5 know them and developing a trust-based relationship
02:18:16 6 with them.

02:18:18 7 Q. Did you engage in any analysis or any
02:18:24 8 investigation whatsoever of Sterling's assets before
02:18:28 9 you formed Sterling Stamos in June of '02?

02:18:34 10 A. Not to my recollection.

02:18:38 11 Q. Ashok Chachra and Kevin Okimoto were
02:18:44 12 the other two founding partners along with you of
02:18:47 13 Sterling Stamos; is that right?

02:18:49 14 A. We refer to them as founding
02:18:52 15 partners. They were not partners when the firm was
02:18:55 16 initiated. The first two to be made partners, in
02:18:58 17 addition to.

02:19:00 18 Q. Okay. Do you know if they performed
02:19:02 19 any diligence or investigation of Sterling before
02:19:06 20 June of '02?

02:19:07 21 A. They may have. I'm not aware of
02:19:09 22 that.

02:19:22 23 Q. Okay. I think we're done with that
02:19:30 24 document, Mr. Stamos.

02:19:38 25 What benefits or advantages did the

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02:19:41 1 Sterling side of the partnership bring to Sterling
02:19:45 2 Stamos?

02:19:46 3 MR. GOUDISS: I object. Go ahead.

02:19:49 4 A. Three advantages that I can think of.
02:19:52 5 First is they provided seed capital for the initial
02:19:58 6 set of limited partner investments. Second is that
02:20:02 7 they introduced other potential investors to us.
02:20:09 8 And then, more generally speaking, they had a
02:20:15 9 sterling reputation as owners of the New York Mets
02:20:17 10 and as successful real estate investors that gave us
02:20:22 11 credibility as we started to build the business.

02:20:26 12 Q. With respect to the seed capital, do
02:20:29 13 you know how they funded the seed capital in
02:20:32 14 Sterling Stamos?

02:20:33 15 A. Are you asking what the source of
02:20:34 16 that capital was?

02:20:35 17 Q. Yes.

02:20:36 18 A. I don't know what the source of -- I
02:20:39 19 believe you're talking about the working capital?

02:20:41 20 Q. Yes.

02:20:42 21 A. I don't know what the source of their
02:20:43 22 working capital was.

02:20:44 23 Q. Do you know if they withdrew funds
02:20:47 24 from Madoff to invest in Sterling Stamos?

02:20:52 25 A. I do not know the answer to that

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02:20:53 1 question. Talking about working capital, I think it
02:20:58 2 was \$500,000. I don't know what the source of that
02:21:01 3 was.

02:21:07 4 Q. And with respect to point 2 with
02:21:10 5 potential investors, referring potential investors
02:21:12 6 to Sterling Stamos, do you know if any of the
02:21:15 7 investors that they referred to Sterling Stamos, if
02:21:19 8 they were also Madoff investors as well?

02:21:23 9 A. I believe that that is true.

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Q. And what was your response to

02:25:12 7

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concern that Madoff might be

02:25:15 8

front-running?

02:25:19 9

A. I remember my response. It was,

02:25:22 10

first, I am not, have not done due diligence on

02:25:27 11

Mr. Madoff, he's not in our investment portfolio,

02:25:29 12

and I cannot give you counsel as to how to invest in

02:25:35 13

managers outside my own portfolio. I said, there

02:25:38 14

are issues that have been raised but my assumption

02:25:40 15

is, having been an investor myself, that Mr. Madoff

02:25:45 16

is incredibly honest, incredibly reputable and

02:25:49 17

perhaps one of the best hedge fund managers in

02:25:52 18

modern history.

02:25:53 19

With all that said, I still believe

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it is prudent to not put more than 10 percent of

02:25:58 21

your assets in any one manager.

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Q. And did he tell you, REDACTED tell

02:26:33 7

you why he was concerned that his money with

02:26:36 8

Mr. Madoff might be at risk?

02:26:39 9

A. I don't recall him telling me why,

02:26:41 10

other than explaining to me that he still had a

02:26:44 11

substantial portion of his assets with Mr. Madoff.

02:26:47 12

Q. And what was your response to that

02:26:50 13

comment from REDACTED ?

02:26:52 14

A. At that time my view was, and I

02:26:55 15

expressed it to him, was that there seems to be no

02:26:58 16

reason to be worried about this capital being at

02:27:01 17

risk. However, it's still concentration risk and

02:27:07 18

there's still the possibility that he could retire,

02:27:09 19

there's still the possibility he could be hit by a

02:27:12 20

truck, there's the possibility that he could have a

02:27:14 21

regulatory review in which your assets are held up

02:27:17 22

for a period of time. And for, again, those reasons

02:27:20 23

I wouldn't put more than 10 percent of my assets in

02:27:23 24

any one manager. But I put it in the same category

02:27:26 25

as an investment with any other investment manager

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02:27:27 1 like Mr. Madoff, such as D.E. Shaw or any other
02:27:32 2 similarly situated manager.

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Q. And with respect to Madoff, did you begin to monitor the broker-dealer issue?

A. No. Never did due diligence on Mr. Madoff.

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Q. Okay. When did you first discuss the issue of front-running with Mr. Katz? By Mr. Katz we're talking about Saul Katz.

02:32:41 1 A. Saul Katz.

02:32:43 2 I don't recall when the first time
02:32:45 3 was.

02:32:49 4 Q. Was it before or after your
02:32:51 5 discussion with Mr. Dunleavy about Dunleavy's
02:32:55 6 concerns with front-running and Madoff?

02:32:59 7 A. I don't recall. Could have been
02:33:00 8 before, could have been after. There were rumors of
02:33:05 9 that, so he could have raised it with me, but I
02:33:08 10 don't recall.

02:33:10 11 Q. What did you tell Mr. Saul Katz about
02:33:15 12 the possibility that Madoff may be front-running?

02:33:19 13 MR. GOUDISS: I object. Go ahead.

02:33:21 14 A. My view was that I didn't believe
02:33:25 15 that that was true. I just didn't believe it was
02:33:29 16 true.

02:33:29 17 Q. So you told Saul Katz that you did
02:33:32 18 not think that the rumor was true; is that what
02:33:36 19 you're saying?

02:33:37 20 A. Yes.

02:33:38 21 Q. What else did you discuss with
02:33:39 22 Mr. Saul Katz concerning the possibility that Madoff
02:33:44 23 may be front-running?

02:33:47 24 MR. GOUDISS: I object. Go ahead.

02:33:48 25 A. If he were front-running, what would

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02:33:51 1 the implications be. Or if he were accused of
02:33:54 2 front-running, what could the implications be.

02:33:56 3 Q. And what did you discuss about the
02:33:57 4 implications?

02:33:58 5 A. I remember Mr. Katz explaining to me
02:34:02 6 that he didn't believe that that were true, that
02:34:05 7 Mr. Madoff had been reviewed regularly by the SEC,
02:34:12 8 that he was one of the most reputable investors,
02:34:15 9 that he'd known him for 25 years, that he was highly
02:34:18 10 honest, highly honorable. And for those reasons he
02:34:22 11 didn't believe it were true and he asked me what I
02:34:29 12 think.

02:34:33 13 Q. Is this over the course of several
02:34:39 14 discussions or was this one discussion that you
02:34:42 15 recollect?

02:34:42 16 A. I don't recollect a specific
02:34:44 17 discussion. I just recall having a few discussions
02:34:50 18 about these set of topics.

02:34:52 19 Q. And by set of topics we're talking
02:34:54 20 about front-running, single-manager and the
02:34:57 21 broker-dealer issue, with Mr. Katz?

02:35:00 22 A. In the context of initially a
02:35:04 23 diversification.

02:35:06 24 Q. I'm sorry, what was that?

02:35:07 25 A. In the context of my explaining to

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02:35:09 1 Mr. Katz why I thought it was a good idea for him to
02:35:12 2 be diversified.

02:35:15 3 Q. So that the diversification issue was
02:35:18 4 a continuous subject of discussion with Mr. Katz?

02:35:22 5 A. Yes.

02:35:25 6 Q. And within those discussions of
02:35:27 7 diversification the issue of front-running, of
02:35:32 8 Madoff possibly front-running, came up?

02:35:34 9 MR. GOUDISS: I object. Go ahead.

02:35:36 10 A. May have come up in the context of
02:35:38 11 diversification, it may have come up in the context
02:35:41 12 of the competition that I felt with Madoff, of
02:35:44 13 wanting to get more, have Mr. Katz invest more money
02:35:48 14 with me as opposed to invest money with somebody
02:35:52 15 else.

02:35:52 16 Q. So, in the context of further
02:35:55 17 diversifying away from Madoff to Sterling Stamos?

02:35:57 18 A. Not necessarily away from Madoff.
02:35:59 19 When they sold the building, I'd like to get that
02:36:03 20 money invested in 25 managers, not in one manager.

02:36:07 21 Q. But one of the purposes of Sterling
02:36:09 22 Stamos was to diversify the Katz and Wilpon family's
02:36:16 23 investments in Madoff, right?

02:36:17 24 A. Purpose was initially
02:36:19 25 diversification. And then later for me it became

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02:36:22 1 competition.

02:36:24 2 Q. Right. But initially, as we
02:36:26 3 discussed earlier, they had a substantial amount of
02:36:28 4 their assets in Madoff, correct?

02:36:30 5 A. That was my understanding.

02:36:31 6 Q. Right. And one of the stated
02:36:34 7 purposes of forming Sterling Stamos for the Katz/
02:36:38 8 Wilpon family was to diversify some of those assets
02:36:40 9 into another investment vehicle; isn't that right?

02:36:44 10 A. To diversify their overall portfolio
02:36:47 11 of assets because they had money with Madoff, but
02:36:49 12 they also had real estate, baseball team and various
02:36:53 13 other assets, funds.

02:36:56 14 Q. When was the first time you raised,
02:37:00 15 or when was the first time the issue of the
02:37:03 16 broker-dealer Madoff issue, when was that first
02:37:06 17 discussed with Saul Katz?

02:37:08 18 A. I don't recall the first time. I
02:37:10 19 do -- I don't believe it was at any time in the
02:37:14 20 early years of the firm, because it was not an issue
02:37:16 21 that we monitored in the early years of the firm.

02:37:19 22 Q. So, the discussion you had with
02:37:25 23 Mr. Saul Katz concerning the broker-dealer issues
02:37:29 24 with Madoff, was that before or after Mr. Dunleavy
02:37:35 25 raised his concerns with the broker-dealer issue?

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02:37:40 1 A. It may have been before and it may
02:37:41 2 have been after, it may have been both. I think it
02:37:44 3 was likely it was both, before and after.

02:37:46 4 Q. And who raised the broker-dealer
02:37:49 5 issue in those discussions, was it you or Mr. Saul
02:37:52 6 Katz?

02:37:53 7 A. I don't recall whether it was he who
02:37:58 8 initiated or whether it was I that initiated it or
02:38:01 9 whether it was another one of our colleagues/
02:38:04 10 employees who initiated it.

02:38:07 11 Q. Who were, or who would have been the
02:38:11 12 other employees or colleagues that would have raised
02:38:13 13 the broker-dealer issue?

02:38:17 14 MR. GOUDISS: I object. Go ahead.

02:38:18 15 A. Best of my knowledge the most likely
02:38:21 16 individuals would have been either Kevin Okimoto or
02:38:27 17 Ashok Chachra, who was the chief investment
02:38:28 18 strategist.

02:38:29 19 Q. The discussions that you had with
02:38:31 20 Saul Katz concerning broker-dealer, the possible
02:38:35 21 broker-dealer issues with Madoff, what what the
02:38:38 22 subject matter, or what was -- what did you discuss?

02:38:41 23 MR. GOUDISS: I object. Go ahead.

02:38:46 24 A. Post-2005, I believe, post-2005, late
02:38:54 25 2005, early 2006, the existence of a manager who was

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02:38:58 1 both a broker-dealer and a fund manager became not a
02:39:02 2 red flag for us but a yellow flag, one of the
02:39:06 3 operational due diligence issues that we looked at,
02:39:09 4 and was one of the indications for us that we should
02:39:12 5 monitor it closely and consider whether we should
02:39:16 6 continue to be an investor in that fund.

02:39:19 7 So I put it in the same context of
02:39:21 8 investment that we made, for example, with D.E. Shaw
02:39:24 9 who was a fund manager but also was his own
02:39:27 10 broker-dealer and was yet another point of reference
02:39:30 11 for why we would not put more than five or ten
02:39:34 12 percent into any one manager.

02:39:37 13 Q. And did you express to Saul Katz the
02:39:41 14 fact that this broker-dealer relationship was a
02:39:50 15 yellow flag under your due diligence process?

02:39:53 16 A. Expressed it in the terms of not best
02:39:55 17 practices. For a manager to be identified as a core
02:39:58 18 manager, he would have to have best practices across
02:40:02 19 the board. And a core manager could get a larger
02:40:05 20 allocation of capital, as much as 10 or even 15
02:40:08 21 percent in any one of our funds. So, again, it was
02:40:11 22 a competitive discussion.

02:40:13 23 Q. Okay. But did you tell Saul Katz
02:40:15 24 that the broker-dealer issue was a yellow flag from
02:40:19 25 your due diligence perspective?

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02:40:21 1 A. We had not done due diligence on
02:40:24 2 Bernie Madoff.

02:40:24 3 Q. I'm not asking you about that. I'm
02:40:28 4 asking you, did you tell him that the broker-dealer
02:40:31 5 issue was a yellow flag under your due diligence
02:40:35 6 processes?

02:40:35 7 A. I'm not sure if I referred to it as a
02:40:37 8 yellow flag, but at some point, as one of the owners
02:40:41 9 of our business, he became aware of the kinds of
02:40:43 10 issues that we started to monitor and put on our
02:40:47 11 operational due diligence checklist, and I'm
02:40:48 12 confident that he knew that that was one of the
02:40:50 13 operational due diligence issues that we raised with
02:40:53 14 managers.

02:40:54 15 Q. Do you recall having any specific
02:40:57 16 discussions with Saul Katz about broker-dealer
02:41:00 17 issues being an item on your due diligence
02:41:05 18 checklist?

02:41:06 19 A. I don't recall a specific
02:41:07 20 conversation. I recall a general conversation, or
02:41:11 21 set of conversations. I apologize.

02:41:17 22 Q. Did you also have a discussion with
02:41:20 23 him about the broker-dealer issue as being a yellow
02:41:23 24 flag vis-a-vis Madoff?

02:41:25 25 MR. GOUDISS: I object. Go ahead.

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02:41:30 1 A. Yes.

02:41:31 2 Q. And what did you tell him in that
02:41:34 3 discussion?

02:41:35 4 A. It raised an operational issue for us
02:41:40 5 that suggested to us that we needed -- if we had a
02:41:43 6 manager who did that, we would monitor it very
02:41:47 7 closely.

02:41:47 8 Q. Did you say anything else to Saul
02:41:49 9 Katz about that issue?

02:41:51 10 A. I believe we had a discussion about
02:41:53 11 the kinds of issues that that could raise.

02:41:56 12 Q. And what did you tell him about the
02:41:59 13 kinds of issues that that could raise?

02:42:01 14 A. I recall two issues. One is that it
02:42:05 15 was increasingly becoming not best practices, that
02:42:09 16 in the past a number of managers had done that for
02:42:12 17 convenience purposes, but that increasingly that was
02:42:15 18 not best practice. And then, in particular, the
02:42:18 19 issue that it could possibly raise is that if one
02:42:22 20 were both a broker-dealer and an investment manager,
02:42:25 21 one could use information that when garnered from
02:42:28 22 one's broker-dealership would give you advantages as
02:42:32 23 an investment manager, and that would be
02:42:35 24 inappropriate.

02:42:36 25 Q. Is that related to the front-running

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02:42:38 1 issue that we discussed earlier?

02:42:39 2 A. That's related to having information
02:42:42 3 that could allow one to possibly front-run.

02:42:50 4 Q. Were any of these discussions that
02:42:52 5 you had with Saul Katz concerning the broker-dealer
02:42:54 6 issue or the front-running issue reduced to writing
02:42:58 7 in any way?

02:42:59 8 A. Not to my recollection.

02:43:01 9 Q. Were these discussions in person or
02:43:04 10 over the phone?

02:43:05 11 A. I believe both in person and over the
02:43:07 12 phone.

02:43:14 13 Q. How many in-person meetings did you
02:43:17 14 have with Saul Katz where you discussed the Madoff
02:43:20 15 front-running issue and the Madoff broker-dealer
02:43:24 16 issue?

02:43:24 17 MR. GOUDISS: I object. Go ahead.

02:43:25 18 A. Just to be clear, I did not raise the
02:43:27 19 Madoff front-running issue, on a regular basis. I
02:43:30 20 raised the issue of Mr. Madoff on a regular basis
02:43:32 21 because on a month-to-month basis my performance
02:43:36 22 returns were being compared to Mr. Madoff's returns.

02:43:38 23 Q. So on a monthly basis you had
02:43:40 24 discussions with Saul Katz concerning Madoff
02:43:44 25 returns?

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02:43:44 1 A. Either I or a member of my firm on a
02:43:47 2 regular basis, most likely monthly, would have some
02:43:51 3 conversation with Mr. Katz about performance of
02:43:56 4 Bernard Madoff versus performance of his capital
02:43:58 5 with us.

02:44:04 6 Q. What were the issues that were raised
02:44:06 7 by Saul Katz during these regular discussions?

02:44:10 8 A. Two very specifically. On any
02:44:12 9 concerns that I would raise about Mr. Madoff, he
02:44:15 10 dismissed it categorically, as these are not issues
02:44:20 11 that he needed to worry about, other than
02:44:22 12 diversification. And he had a plan to diversify
02:44:25 13 over time.

02:44:26 14 And number two was a, I would say,
02:44:29 15 constant comparison about the risk adjusted returns
02:44:34 16 of our funds versus Bernard Madoff's. Some months
02:44:36 17 we did better and some months we didn't do as well.

02:44:39 18 Q. What was your response when Saul Katz
02:44:42 19 categorically rejected some of the concerns that you
02:44:46 20 expressed about Madoff?

02:44:47 21 A. I was of the same opinion in those
02:44:51 22 years.

02:44:51 23 Q. And when we're talking about those
02:44:53 24 years, what years are you referring to,
02:44:55 25 specifically?

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02:44:56 1 A. All the way to the time when the
02:44:58 2 fraud was discovered, I had the same conclusion.
02:45:02 3 Other than not putting more than 10 percent into a
02:45:06 4 manager, and that as a fiduciary I could not put my
02:45:10 5 capital, my fund's capital there, I agreed with him.
02:45:13 6 Legend in the industry and all of the things that he
02:45:17 7 said.

02:45:20 8 Q. Did you ever express to him that
02:45:23 9 given the fact that they had so much money in
02:45:27 10 Madoff, that even though you both shared the
02:45:31 11 conclusion that he wasn't front-running and that the
02:45:34 12 broker-dealer issue that he had wasn't a substantial
02:45:39 13 concern but that given the volume of their assets
02:45:42 14 under management with Madoff, that he or Sterling
02:45:45 15 should take another look at Madoff?

02:45:47 16 A. I don't understand what you mean by
02:45:48 17 take another look.

02:45:49 18 Q. That they should engage in any --
02:45:51 19 that Sterling should engage in any diligence with
02:45:53 20 Madoff?

02:45:54 21 A. I didn't think that was my -- no. I
02:45:56 22 never did due diligence on Madoff and I never asked
02:45:59 23 them to do due diligence on Madoff.

02:46:01 24 Q. Did you ever recommend that they do
02:46:04 25 due diligence on Madoff?

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02:46:06 1 A. Not to my recollection.

02:46:08 2 Q. Did you ever recommend that Sterling
02:46:11 3 withdraw investments from Madoff?

02:46:17 4 A. Yes.

02:46:18 5 Q. Can you elaborate on those
02:46:20 6 discussions?

02:46:21 7 A. To be clear, I viewed Bernard Madoff
02:46:24 8 as my competition for the Sterling Equities' capital
02:46:27 9 and I wanted 90 percent of their liquid assets with
02:46:31 10 me and 10 percent -- with my firm, I should say --
02:46:34 11 and 10 percent with Mr. Madoff.

02:46:35 12 Q. So when you had -- you had
02:46:37 13 discussions with Saul Katz about withdraw --
02:46:39 14 recommending that they withdraw money from Madoff,
02:46:42 15 right? And then invest it with you?

02:46:44 16 A. I would say two things. Either new
02:46:49 17 capital or capital they have, but I recommended the
02:46:53 18 allocation be no more than 10 percent with
02:46:55 19 Mr. Madoff. I didn't know their aggregate assets
02:46:59 20 until years later I found out.

02:47:02 21 Q. Okay. But to get back to my
02:47:03 22 question, was: Did you recommend that they withdraw
02:47:08 23 funds from Madoff and invest it with Sterling
02:47:10 24 Stamos?

02:47:11 25 A. I don't believe that I ever made that

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02:47:12 1 recommendation specifically, because one of the
02:47:14 2 things that I was careful about as an investment
02:47:17 3 advisor is to only advise on the funds that I have
02:47:20 4 internally. And so when someone would ask me, like
02:47:23 5 Mr. Katz, about his capital account with some other
02:47:27 6 manager, I wouldn't -- I couldn't comment on the
02:47:29 7 specific quality of that manager or suggest that he
02:47:33 8 withdraw. But I could suggest to him that in
02:47:36 9 general asset allocation would suggest you have no
02:47:39 10 more than 10 percent in one manager, and let him
02:47:42 11 draw the conclusion.

02:47:43 12 Q. So you never recommended to Saul Katz
02:47:44 13 to withdraw his money from Madoff?

02:47:47 14 A. To be clear, recommended is the word
02:47:49 15 that I'm pausing on. Did I suggest him to do that?
02:47:52 16 Yes. Did I ask him to do that? Yes. But
02:47:55 17 recommendation would assume that I had an investment
02:47:59 18 recommendation about the fund and I didn't have -- I
02:48:00 19 couldn't make an investment recommendation about
02:48:03 20 that fund. It was not under our purview.

02:48:06 21 Q. Okay. So putting aside the term of
02:48:08 22 art of recommendation, you suggested to him or you
02:48:10 23 asked him to withdraw money from Madoff?

02:48:13 24 A. It's important, the distinction.

02:48:15 25 Q. No, I understand that. That's why

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02:48:18 1 I'm drawing it.

02:48:19 2 A. Yes.

02:48:21 3 Q. Okay. Did anyone at Sterling Stamos
02:48:24 4 ever recommend to anyone at Sterling that they
02:48:29 5 should, that Sterling should withdraw its assets
02:48:32 6 from Madoff?

02:48:35 7 A. I don't know if anyone, in the way I
02:48:37 8 use the word "recommend," formal, professional
02:48:40 9 advice, did that. I believe that on a regular basis
02:48:45 10 Mr. Chachra, who was assigned to Mr. Katz's account,
02:48:51 11 encouraged him to diversify from Madoff and put more
02:48:55 12 capital with us. But I say that in the context of
02:48:58 13 competition. We wanted more of his capital, and we
02:49:01 14 believed that whether it was Bernard Madoff or D.E.
02:49:04 15 Shaw or Paul Singer or any other great hedge fund
02:49:07 16 manager, you shouldn't put more than 10 percent with
02:49:09 17 that manager, whoever he or she was.

02:49:11 18 Q. How did Mr. Chachra encourage Saul
02:49:16 19 Katz to diversify his assets from Madoff?

02:49:18 20 MR. GOUDISS: I object. Go ahead.

02:49:20 21 A. One example I can think of is
02:49:23 22 comparing what we knew of Mr. Madoff's returns
02:49:26 23 versus our returns on a pre- and post-tax basis.

02:49:30 24 Q. And what were the conclusions of
02:49:33 25 those comparisons?

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02:49:34 1 A. Roughly speaking, what I recall is
02:49:36 2 that on a pre-tax basis they were comparable. Our
02:49:41 3 diversified portfolio of investment managers
02:49:44 4 generated a comparable set of returns on a pre-tax
02:49:47 5 basis but on a post-tax basis we actually out-
02:49:51 6 performed and that was one of the encouraging
02:49:53 7 reasons for Mr. Katz to put more of his new capital
02:49:56 8 and existing capital, if he was willing to, with us.

02:50:01 9 Q. How else did Mr. Chachra encourage
02:50:05 10 Saul Katz to diversify his funds from Madoff?

02:50:08 11 MR. GOUDISS: I object. Go ahead.

02:50:10 12 A. I don't know the answer to that. I
02:50:12 13 can remember one example.

02:50:17 14 Q. Did Sterling Equities have -- strike
02:50:23 15 that.

02:50:23 16 Did the Wilpon and Katz networks
02:50:28 17 provide any sort of unique due diligence
02:50:31 18 capabilities that you're aware of?

02:50:33 19 A. I don't understand what the Sterling
02:50:36 20 Equities network is.

02:50:37 21 Q. Let me rephrase the question because
02:50:39 22 I was trying to do that.

02:50:41 23 Did the Wilpon and Katz networks
02:50:44 24 provide a unique, any unique due diligence
02:50:47 25 capabilities?

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02:50:48 1 MR. GOUDISS: I object.

02:50:51 2 A. I don't -- I'm not aware of unique
02:50:53 3 due diligence capabilities that they provided.

02:50:56 4 Q. Okay.

02:51:12 5 MR. BOHORQUEZ: Mark that as 2.
02:51:14 6 (Exhibit PS-2 marked for
02:51:17 7 identification.)

02:51:20 8 Q. What I've given you, Mr. Stamos, is
02:51:22 9 Exhibit 2. It's a one-page doc -- or a two-page
02:51:25 10 document entitled "The Sterling Stamos Difference."
02:51:29 11 I just have one or two questions I want to ask you
02:51:32 12 about it when you're ready to discuss.

02:52:04 13 A. Yes.

02:52:05 14 Q. Okay. If you can turn your attention
02:52:09 15 to the second paragraph that starts with, "Internal
02:52:12 16 due diligence network."

02:52:15 17 A. Yes.

02:52:16 18 Q. The second sentence says, "Founded
02:52:20 19 over 30 years ago by the Wilpon and Katz families,
02:52:23 20 Sterling Equities has developed a deep expertise in
02:52:26 21 hedge funds, private equity and real estate."
02:52:30 22 What is your understanding of
02:52:32 23 Sterling Equities' deep expertise in hedge funds?

02:52:36 24 A. I believe that this phrase is what I
02:52:39 25 would call marketing puffery.

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02:52:42 1

Q. Okay.

02:52:43 2

02:52:45 3

02:52:48 4

02:52:51 5

A. I believe that the actual experience in hedge funds that they had was investing in Bernard Madoff and two or three other hedge funds, but it was over a 30-year period of time.

02:52:54 6

02:52:57 7

Q. Okay. What were the other two hedge funds that they were invested in?

02:52:59 8

02:53:01 9

02:53:03 10

A. I don't remember their names, but I know one of them was a fund manager that they transferred over to us in kind.

02:53:06 11

02:53:10 12

Q. Okay. The next sentence beginning with, "In addition to," do you see that?

02:53:14 13

A. Um-hum.

02:53:14 14

02:53:15 15

02:53:18 16

02:53:21 17

02:53:25 18

Q. "In addition to providing a perspective that only experience can generate, the Wilpon and Katz networks also provide unique proprietary sourcing and due diligence capabilities."

02:53:26 19

02:53:28 20

What due diligence capabilities did the Wilpon and Katz network provide?

02:53:31 21

02:53:34 22

02:53:36 23

02:53:39 24

02:53:43 25

A. I think that was, referring to your prior question, I think this is, again, a bit of marketing puffery, if you will, about their business experience, giving us business judgment in the early days that was helpful to us in understanding whether

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02:53:45 1 a hedge fund manager ran a good business, for
02:53:48 2 example.

02:53:49 3 Q. So it wasn't any specific industry
02:53:52 4 knowledge of due diligence, specifically?

02:53:56 5 A. Well, if it was referring to I think
02:53:58 6 real estate, that probably would be the case, and
02:54:01 7 probably private equity as well, because they had
02:54:05 8 funds that did that. But in hedge funds, I don't
02:54:07 9 recall any specific due diligence capabilities they
02:54:11 10 had other than business expertise.

02:54:15 11 Q. Okay.

02:54:15 12 I want to talk for a little bit about
02:54:19 13 Sterling Stamos' due diligence practices. I guess
02:54:26 14 discussion of those practices changed over time,
02:54:28 15 they evolved over time. Is that right?

02:54:31 16 A. Yes.

02:54:31 17 Q. Okay. Let's start with at the
02:54:34 18 beginning of the, at the inception of Sterling
02:54:37 19 Stamos. Generally speaking, what were, what was
02:54:43 20 Sterling Stamos' due diligence practices when
02:54:46 21 evaluating investment managers?

02:54:47 22 A. Prior to becoming a registered
02:54:49 23 investment advisor, I believe that our primary
02:54:52 24 responsibility was to get access to managers that
02:54:55 25 were hard to get access to, and that we did, beyond

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02:55:01 1 meeting the manager, we did very little, if any, due
02:55:05 2 diligence other than negotiating to get access.

02:55:10 3 Q. Okay. And when did that change?

02:55:13 4 A. That changed over time, as we added
02:55:16 5 staff and capability, but specifically the most
02:55:20 6 significant move, in terms of building up
02:55:24 7 operational due diligence, was in the hiring of a
02:55:27 8 CFO, Mr. Kevin Barcelona. With his accounting
02:55:31 9 expertise he began to do due diligence on managers.

02:55:35 10 Q. Okay. And what due diligence did
02:55:39 11 Mr. Barcelona do on managers at the beginning?

02:55:42 12 A. He developed a complete list of due
02:55:44 13 diligence issues that we should ask every manager.

02:55:48 14 Q. Do you still have that initial list
02:55:52 15 somewhere?

02:55:52 16 A. Yes, I believe we submitted that.

02:55:59 17 Q. I just want to go through a couple
02:56:02 18 basic due diligence steps.

02:56:05 19 So, prior to meeting with the fund
02:56:08 20 manager, I understand that at some point Sterling
02:56:10 21 Stamos began to undertake like a data gathering
02:56:15 22 analysis of the fund manager.

02:56:17 23 A. Yes.

02:56:17 24 Q. When did you implement that step?

02:56:22 25 A. Early on in the first three to six

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02:56:24 1 months we started to collect data from whatever
02:56:26 2 sources that we could obtain.

02:56:27 3 Q. That would include like monthly
02:56:29 4 returns and any audited financial statements, TR
02:56:35 5 along those lines?

02:56:36 6 A. My level of knowledge as CEO was
02:56:39 7 looking at returns over time on a risk-adjusted
02:56:43 8 basis and reports that the managers would provide.

02:56:46 9 Q. Of the fund managers?

02:56:48 10 A. Of the fund managers.

02:56:50 11 Q. And when did Sterling Stamos
02:56:53 12 implement on-site visits of the fund managers, as
02:56:58 13 part of its due diligence?

02:56:59 14 A. As part of its investment due
02:57:01 15 diligence we met with managers before investing with
02:57:04 16 them, to discuss their investment strategy and how
02:57:07 17 much capacity we could get with the manager.

02:57:09 18 Q. So that was part of the initial due
02:57:11 19 diligence that you did in the beginning?

02:57:13 20 A. Yes.

02:57:17 21 Q. And other than monthly returns and
02:57:22 22 on-site interviews, were there any other aspects of
02:57:26 23 investment due diligence that Sterling Stamos
02:57:29 24 conducted in the beginning?

02:57:31 25 MR. GOUDISS: I object. Go ahead.

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02:57:33 1 A. I recall an example of another kind
02:57:35 2 of due diligence we did, which was to call some of
02:57:37 3 the people, phone call, or speak with some of the
02:57:40 4 people that were our informal advisors, to get their
02:57:43 5 judgment on managers, A, that we should meet or
02:57:48 6 managers that we were considering investing with.

02:57:52 7 Q. And as part of Sterling Stamos' due
02:57:56 8 diligence, there is an operational aspect of the due
02:57:59 9 diligence process; is that right?

02:58:01 10 A. I recall that beginning with
02:58:05 11 Mr. Kevin Barcelona joining us as CFO in the firm in
02:58:09 12 either 2003 or 2004.

02:58:11 13 Q. So the operational component of your
02:58:13 14 due diligence practices started with when
02:58:17 15 Mr. Barcelona joined the firm?

02:58:19 16 A. I recall that that's when it took on
02:58:23 17 a formal process. I'm sure that in our interviews
02:58:26 18 some operational issues were raised earlier as well,
02:58:30 19 but it became a formal part of our process with
02:58:33 20 Mr. Kevin Barcelona.

02:58:34 21 Q. Generally speaking, what are the
02:58:36 22 operational due diligence issues that are part of
02:58:39 23 Sterling Stamos' due diligence process?

02:58:41 24 A. Generally speaking, they fall into
02:58:42 25 the category of investment due diligence, financial

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02:58:45 1 issues, operational issues.

02:58:48 2 Q. And what are the operational issues?

02:58:52 3 A. Examples of the kinds of operational
02:58:54 4 issues are the number of back-office personnel to
02:58:58 5 support a trading operation, for example.

02:59:00 6 Q. Anything else?

02:59:02 7 A. Well, are you talking about in 2002
02:59:05 8 or over time?

02:59:06 9 Q. Let's start with 2002.

02:59:08 10 A. 2002, very little else, other than
02:59:11 11 general conversations. Over time it became more
02:59:13 12 formal and with the list that Mr. Barcelona
02:59:16 13 developed for us, we specifically asked those
02:59:19 14 questions.

02:59:20 15 Q. Other than the back-office questions,
02:59:22 16 what other operational questions were included on
02:59:25 17 this checklist?

02:59:27 18 A. I don't recall the specifics, but in
02:59:29 19 general assets under management, growth of assets,
02:59:31 20 inflows and outflows of capital, for example.

02:59:35 21 Q. What about the broker-dealer
02:59:37 22 relationship issue, when did that become a part of
02:59:39 23 your due diligence?

02:59:41 24 A. That became a part of our due
02:59:43 25 diligence checklist with Mr. Kevin Barcelona as part

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02:59:46 1 of our process late 2004, I recall.

02:59:49 2 Q. How about third-party administrators,
02:59:52 3 when did that become part of your due diligence?

02:59:55 4 A. Formally third-party administrator
02:59:59 5 became an important issue for us after the Madoff --
03:00:02 6 I believe it was after we found out that Mr. Merkin
03:00:06 7 had had investments with Madoff in Gabriel.

03:00:10 8 Q. But prior to that time, was a third-
03:00:15 9 party administrator part of your due diligence
03:00:18 10 procedures, operational?

03:00:20 11 A. This is what I recall.

03:00:20 12 Q. Okay.

03:00:21 13 A. That we believed that a manager
03:00:23 14 should have either an internal administration or a
03:00:28 15 third-party administrator and an outside audit.
03:00:31 16 That two of those three were required.

03:00:35 17 Q. Okay.

03:00:35 18 A. After Merkin, the Merkin event, we
03:00:40 19 made -- we made it advisable to have all three. Not
03:00:46 20 required, but advisable to have all three. Or at
03:00:49 21 least two -- at least the independent administrator
03:00:52 22 and an outside auditor. They don't necessarily have
03:00:55 23 to have internal administration.

03:00:58 24 Q. Okay. So that was one of the lessons
03:01:03 25 learned from the Merkin incident?

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03:01:05 1 A. That was one of the lessons learned
03:01:07 2 from the Merkin incident.

03:01:08 3 Q. How did Merkin affect -- let me
03:01:13 4 rephrase that.

03:01:14 5 Did you implement any other due
03:01:17 6 diligence, any other changes to your due diligence
03:01:19 7 practices in response to the Merkin incident?

03:01:23 8 A. We may have but that's the one that I
03:01:25 9 recall.

03:01:26 10 Q. Okay. You recall that Sterling
03:01:34 11 Stamos had investments in Bayou?

03:01:37 12 A. Yes.

03:01:41 13 Q. Funds were redeemed from Bayou I
03:01:44 14 think in February of '05, sometime around then,
03:01:49 15 right?

03:01:49 16 A. Yes.

03:01:50 17 Q. Why did Sterling Stamos withdraw its
03:01:55 18 funds from Bayou at that time?

03:01:59 19 A. We withdraw capital from, what I
03:02:05 20 recall, we were withdrawing capital from Bayou and
03:02:09 21 submitting a redemption in February of, I think it
03:02:11 22 was 2005, for several reasons.

03:02:14 23 The first reason that I recall was
03:02:15 24 that the fund manager, Mr. Israel, had told me and
03:02:24 25 our group that he intended to raise more assets and

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03:02:29 1 shift strategies. Style drift and asset management
03:02:34 2 growth were two of the issues that we monitored
03:02:37 3 closely.

03:02:38 4 Second set of issues had to do
03:02:40 5 with -- so the first issue was AUM growth had gone
03:02:44 6 from 200 million to 500 million. And told us of his
03:02:47 7 intention to manage over a billion. That was a
03:02:49 8 yellow flag for us.

03:02:51 9 The second issue was that he had been
03:02:54 10 successful in trading short-term equities, small cap
03:02:59 11 equities, and informed us that he intended to
03:03:02 12 broaden that strategy to include commodities, and
03:03:07 13 that was also a yellow flag. A style drift.

03:03:11 14 And then the third were a set of
03:03:14 15 operational issues that our chief financial officer
03:03:17 16 raised, and those had to do with issues of back-
03:03:21 17 office administration and the strength of the back-
03:03:25 18 office team, and as well as the fact that he had a
03:03:30 19 broker-dealer and was an investment manager himself.
03:03:35 20 That became one of our issues that we raised.

03:03:44 21 Q. Okay. And eventually it was
03:03:45 22 discovered that the Bayou fund was a fraud, right?

03:03:48 23 A. I believe it was six to nine months
03:03:51 24 after we redeemed.

03:03:52 25 Q. Did that experience cause you to

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03:03:54 1 change your due diligence practices in any way?

03:03:56 2 A. Yes.

03:03:57 3 Q. What did you do in response to Bayou,
03:04:00 4 with respect to due diligence?

03:04:02 5 A. Yes. The issues that I just
03:04:03 6 identified, we stuck with those issues. That is,
03:04:07 7 asset under management growth, style drift. But the
03:04:10 8 third issue, the operational due diligence issues,
03:04:13 9 were elevated to the point of giving the operational
03:04:19 10 team the ability to veto an investment if they saw
03:04:24 11 an issue that they thought was of concern.

03:04:28 12 Q. Now, was the broker-dealer --

03:04:31 13 A. Broker-dealer, any issues about back-
03:04:33 14 office staff, operational strength and the like.
03:04:38 15 Still a yellow flag, but a flag that we would look
03:04:41 16 at very closely. Because a number of other managers
03:04:44 17 had that issue as well.

03:04:46 18 Q. Okay. Now, just so I have a complete
03:04:49 19 understanding of -- well, not a complete
03:04:51 20 understanding, but a good enough understanding of
03:04:54 21 Sterling Stamos' due diligence practices and the
03:04:57 22 evolution, you referenced investment due diligence,
03:05:02 23 operational. Is there a third component?

03:05:05 24 A. Yes.

03:05:05 25 Q. What is that component?

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03:05:07 1 A. Risk management.

03:05:07 2 Q. What was the risk management due
03:05:10 3 diligence of Sterling Stamos at the beginning?

03:05:15 4 A. Quantitative.

03:05:16 5 Q. And what do you mean by that?

03:05:18 6 A. I'll give you an example.

03:05:20 7 Q. Um-hum.

03:05:21 8 A. We would construct a portfolio, as a
03:05:24 9 model portfolio, and back-test the data for
03:05:27 10 investment returns and volatility, and then run
03:05:30 11 correlation analysis versus the S & P 500, versus
03:05:33 12 the Lehman Aggregate Bond Index.

03:05:36 13 Q. So compare the returns to S & P and
03:05:43 14 so forth?

03:05:44 15 A. Yes.

03:05:44 16 Q. Anything else?

03:05:45 17 A. Yes. Other forms of general
03:05:48 18 quantitative analysis to seek to optimize return per
03:05:53 19 unit of volatility.

03:05:54 20 Q. Anything else?

03:05:56 21 A. I don't recall the specifics, but
03:05:58 22 portfolio construction, generally.

03:06:02 23 Q. And for each of those three
03:06:03 24 components -- well, strike that.

03:06:05 25 Now, did that change over time?

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03:06:08 1 A. Yes.

03:06:08 2 Q. How did it change?

03:06:10 3 A. All three became more and more
03:06:12 4 process driven and more and more formalized, over
03:06:16 5 time.

03:06:16 6 Q. And when you say formalized, were the
03:06:22 7 conclusions that are reached by each one of these
03:06:24 8 teams, were they reduced to writing as part of the
03:06:27 9 more formal process?

03:06:29 10 A. Eventually.

03:06:30 11 Q. When did it become a practice to
03:06:33 12 reduce these due diligence conclusions for fund
03:06:39 13 managers to writing?

03:06:40 14 A. I don't recall when each of those
03:06:42 15 three started. I just know that by the back half of
03:06:46 16 our firm's existence they were fairly formalized. I
03:06:51 17 know over the last three or four years, for example.

03:06:55 18 Q. When you say that they're formalized
03:06:57 19 and reduced to writing, is there like a due
03:07:00 20 diligence file?

03:07:01 21 A. Yes.

03:07:01 22 Q. What is contained in the due
03:07:03 23 diligence file?

03:07:05 24 A. Today?

03:07:05 25 Q. Yes, today.

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03:07:06 1 A. This is what I know. In the context
03:07:08 2 of the merger with Merrill Lynch which was, I
03:07:13 3 believe July 1st, June 30th, 2007, one of the
03:07:17 4 requirements of that merger was that we create an
03:07:21 5 operational due diligence team, a risk team and
03:07:25 6 investment team, and that those three teams give
03:07:28 7 independent recommendations. And that each one
03:07:30 8 would have a veto over investments going in and
03:07:34 9 potential concerns coming out.

03:07:37 10 Q. In each one of those teams, did they
03:07:40 11 have, were they required to reduce their
03:07:44 12 recommendations to writing?

03:07:46 13 A. I believe after July 1st, 2007 all of
03:07:50 14 them are reduced to writing, either in one memo,
03:07:53 15 three memos or some combination of memos, for every
03:07:57 16 new investment that we make.

03:07:59 17 Q. And those memos are all kept in the
03:08:00 18 due diligence file for, I guess by investment
03:08:03 19 manager; is that right?

03:08:05 20 A. I believe so.

03:08:06 21 Q. And how far back do those records go?

03:08:09 22 A. I don't know.

03:08:09 23 Q. But they go far -- it's safe to say
03:08:14 24 they go as far back to June of '07?

03:08:18 25 A. Yes. I'm not confident that every

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03:08:20 1 manager has had each of those three completed, but I
03:08:24 2 believe that's our objective and I believe we are
03:08:28 3 fairly close to that, if not completed on that.

03:08:31 4 MR. BOHORQUEZ: Let's go off the
03:08:32 5 record for a minute.

03:08:34 6 THE VIDEOGRAPHER: Going off the
03:08:35 7 record, the time is 3:09.

03:08:44 8 (Recess taken.)

03:23:42 9 THE VIDEOGRAPHER: We are back on the
03:23:50 10 record. The time is 3:24. This is tape number 4.

03:23:59 11 BY MR. BOHORQUEZ:

03:23:59 12 Q. Mr. Stamos, you'd said earlier that
03:24:03 13 when Mr. Barcelona joined Sterling Stamos that at
03:24:07 14 some point in 2003 or 2004 he compiled a due
03:24:12 15 diligence checklist; is that right?

03:24:15 16 A. That's correct.

03:24:15 17 Q. Was it in '03 or '04; do you recall?

03:24:18 18 A. I don't recall.

03:24:19 19 Q. But it was roughly in that time
03:24:21 20 frame?

03:24:21 21 A. Yes.

03:24:23 22 Q. Were there any other policies or
03:24:28 23 guidelines concerning due diligence that
03:24:31 24 Mr. Barcelona compiled at that time, other than this
03:24:35 25 checklist?

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03:24:37 1 A. I'm not aware of others.

03:24:41 2 Q. Was that checklist, the due diligence
03:24:48 3 checklist that Mr. Barcelona prepared at that time
03:24:52 4 frame, '03 and '04, was that ever provided to any of
03:24:56 5 the general partners of Sterling Stamos?

03:24:59 6 A. I don't recall whether it was or was
03:25:00 7 not.

03:25:03 8 Q. Do you know if that checklist, the
03:25:05 9 due diligence checklist, was ever provided to Saul
03:25:08 10 Katz?

03:25:08 11 A. I don't know whether it was or not.

03:25:10 12 Q. Did Saul Katz have access to that
03:25:12 13 checklist if he wanted to see it?

03:25:14 14 MR. GOUDISS: I object. Go ahead.

03:25:16 15 A. I believe that any of our limited
03:25:20 16 partners would have access to -- if they asked the
03:25:23 17 questions, for example, what kind of issues do you
03:25:25 18 look for.

03:25:30 19 Q. Do you have any recollection of Saul
03:25:32 20 Katz or David Katz ever asking to see the due
03:25:36 21 diligence checklist?

03:25:38 22 A. I don't recall them asking to see the
03:25:40 23 due diligence checklist. They may have.

03:25:44 24 Q. Mr. Barcelona's due diligence
03:25:51 25 checklist, that evolved over time, right?

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03:25:54 1 A. Yes.

03:25:55 2 Q. Prior to December 2008 or to take a
03:26:05 3 snapshot prior to December 11th, 2008, other than
03:26:08 4 the due diligence checklist that Mr. Barcelona
03:26:12 5 prepared and then updated, what other policies or
03:26:16 6 guidelines concerning due diligence were reduced to
03:26:19 7 writing?

03:26:20 8 A. I remember one very specific addition
03:26:22 9 to our due diligence requirements. Post or
03:26:27 10 contemporaneous with the merger with, now Bank of
03:26:32 11 America, then Merrill Lynch, we, at the request of
03:26:36 12 Merrill Lynch, established a transparency report for
03:26:39 13 all of our managers to fill out. Beginning in July
03:26:42 14 of 2007 we started to require the completion of the
03:26:51 15 transparency report.

03:26:54 16 Q. So, after the merger with Merrill
03:27:00 17 Lynch, right around that time, in terms of due
03:27:05 18 diligence guidelines and policies, there was the
03:27:09 19 checklist that was prepared by Mr. Barcelona, there
03:27:12 20 was also a transparency report, correct?

03:27:15 21 A. Yes.

03:27:16 22 Q. Was there anything else in place at
03:27:17 23 that time in 2007?

03:27:19 24 A. Yes.

03:27:20 25 Q. What else?

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03:27:21 1 A. The operational checklist that
03:27:23 2 Mr. Barcelona developed was expanded to include a
03:27:26 3 whole set of other issues, legal, compliance and the
03:27:30 4 like.

03:27:31 5 Q. Those are all contained in one
03:27:34 6 document or are they separate documents?

03:27:37 7 A. I don't know whether it's one
03:27:38 8 document or sets of documents. I do know that
03:27:43 9 investment due diligence, operational due diligence
03:27:45 10 is a long list, and risk due diligence are all
03:27:49 11 compiled.

03:27:50 12 Q. And other than those three lists of
03:27:53 13 operational, investment and risk and the
03:27:56 14 transparency report, are there any other documents
03:28:00 15 containing Sterling Stamos' policies or guidelines
03:28:03 16 concerning due diligence?

03:28:04 17 A. I believe there are. I don't know
03:28:07 18 what the names of them are. We have other documents
03:28:09 19 that describe what it is we do and how we do it.

03:28:12 20 Q. Generally speaking, what are those
03:28:13 21 other documents?

03:28:15 22 A. I don't recall the names of them.

03:28:16 23 Q. Are they policy statements or what
03:28:18 24 are they?

03:28:18 25 A. I don't know.

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03:28:20 1 Q. Did you or anyone at Sterling Stamos
03:28:26 2 have any discussions with anyone from Sterling
03:28:30 3 concerning Merrill Lynch's requirement or request
03:28:37 4 that Sterling Stamos implement some of these new due
03:28:42 5 diligence practices?

03:28:44 6 A. I don't recall a specific
03:28:45 7 conversation about that, but I would not be
03:28:48 8 surprised if that conversation occurred between
03:28:50 9 members of my firm, possibly me, and members of
03:28:55 10 Sterling Equities.

03:28:57 11 Q. And if you were to have had those
03:29:00 12 conversations, would they have been with Saul Katz
03:29:02 13 and/or David Katz?

03:29:04 14 MR. GOUDISS: I object. Go ahead.

03:29:06 15 A. They would most likely have been with
03:29:08 16 Mr. Saul Katz, again in the context of my being
03:29:12 17 proud of our evolution of the firm, creating better
03:29:15 18 processes and procedures.

03:29:17 19 Q. Anyone else?

03:29:19 20 A. Anyone else?

03:29:20 21 Q. From Sterling that you would have
03:29:22 22 spoken to about these due diligence practices.

03:29:24 23 MR. GOUDISS: I object.

03:29:25 24 A. I don't recall having conversations
03:29:28 25 with people from Sterling on a regular basis, other

03:29:30 1 than Mr. Katz.

03:29:33 2 Q. With respect to Bayou, you'd
03:29:36 3 identified at least two issues that you recalled as
03:29:41 4 to why Sterling Stamos redeemed its investments in
03:29:45 5 Bayou and they were issues with the back-office
03:29:47 6 administration, as well as the investment manager
03:29:50 7 being both the broker and the dealer.

03:29:53 8 MR. GOUDISS: I object.

03:29:55 9 A. No, I don't believe that's what I
03:29:56 10 said. I believe I identified three sets of issues.

03:30:00 11 Q. Okay. But were two of the three
03:30:02 12 issues the ones I just identified?

03:30:04 13 A. No. The way -- would you repeat what
03:30:06 14 you just asked because I believe those were two
03:30:09 15 subparts of a third issue.

03:30:11 16 Q. Okay. My understanding is that one
03:30:13 17 of the issues you had with Bayou that caused
03:30:16 18 redemption of the funds was concerns with the back-
03:30:20 19 office administration; is that right?

03:30:23 20 A. That's not what I testified or meant
03:30:25 21 to testify. What I expressed was we had three
03:30:28 22 concerns, one about asset growth, a second about
03:30:32 23 style drift, and a third, a set of general
03:30:36 24 operational issues. One of which was the strength
03:30:39 25 of the back office relative to the growth in the

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03:30:43 1

assets.

03:30:43 2

Q. Okay.

03:30:45 3

A. Second issue that I raised was

03:30:48 4

establishing a best practice of separating out the

03:30:51 5

broker-dealer from the investment management,

03:30:56 6

specifically for the purposes of giving the manager

03:31:01 7

focus on investing and not on being a broker-dealer.

03:31:05 8

Q. And were there any other general

03:31:08 9

operational issues?

03:31:10 10

A. I do recall other operational issues

03:31:13 11

being raised. They didn't raise to the level of the

03:31:16 12

concern of the first two major issues, which is

03:31:19 13

asset growth, style drift and general operational

03:31:23 14

issues. I think one of the general operational

03:31:26 15

issues was that the company in general, Mr. Israel

03:31:30 16

in particular, had had some employee disputes.

03:31:35 17

Q. Were there any concerns with the

03:31:38 18

audit firm that Bayou used?

03:31:43 19

A. I don't recall concerns with the

03:31:46 20

audit firm at the time we submitted the redemption.

03:31:50 21

I recall concerns with the audit firm after we found

03:31:52 22

out about the fraud.

03:31:53 23

Q. And what were those concerns?

03:31:55 24

A. I think the concern that was raised

03:31:56 25

was that that audit firm either did not exist or was

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03:32:00 1 some sort of fictitious organization.

03:32:04 2 Q. Did the discovery that the audit firm
03:32:07 3 was fictitious or some other organization, did that
03:32:12 4 have any effect on your due diligence policies
03:32:16 5 moving forward?

03:32:17 6 A. Yes.

03:32:17 7 Q. What effect did it have?

03:32:19 8 A. It was added to the due diligence
03:32:22 9 checklist from Mr. Barcelona.

03:32:27 10 Q. Specifically what was added to the
03:32:29 11 checklist concerning the audit firm?

03:32:31 12 A. I don't know specifically. I know
03:32:32 13 generally what was added.

03:32:33 14 Q. And generally what was added?

03:32:35 15 A. Generally what was added, that we
03:32:37 16 would either know the manager -- know the audit
03:32:40 17 firm, or if we didn't know the audit firm, we would
03:32:42 18 do a site visit to get to know the audit firm.

03:32:48 19 Q. And were any of the issues that were
03:32:52 20 identified with Bayou, either at the time of
03:32:55 21 redemption or later, like the audit firm issue, were
03:32:59 22 any of those issues ever discussed with Saul Katz?

03:33:02 23 A. I believe so.

03:33:06 24 Q. When did or who had those discussions
03:33:09 25 with Saul Katz?

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03:33:11 1 A. I believe that I had some of those
03:33:13 2 discussions and I believe that Mr. Chachra had some
03:33:17 3 of those discussions with him as well. He may well
03:33:20 4 have had some of those discussions with
03:33:22 5 Mr. Barcelona as well.

03:33:45 6 Q. Okay.
03:33:46 7 Mr. Stamos, I'm handing you what
03:33:48 8 we're going to mark as Exhibit 3.

03:33:56 9 (Exhibit PS-3 marked for
03:34:02 10 identification.)

03:34:04 11 Q. It's a chain email that begins with
03:34:07 12 an email from you to I believe your investors on
03:34:12 13 December 12th, 2008 and it continues, ending with a
03:34:16 14 chain email between you and Ashok Chachra on
03:34:21 15 December 13th. Take a moment to review it and let
03:34:24 16 me know when you're ready to discuss.

03:35:04 17 A. I'm ready.

03:35:05 18 Q. Okay. Why don't we start with the
03:35:07 19 second page of Exhibit 3. Starting with, it says an
03:35:12 20 email from you to yourself of December 12, 2008 at
03:35:17 21 2:30 in the afternoon. It's addressed to investment
03:35:20 22 partners.

03:35:25 23 A. Excuse me, am I looking at this
03:35:26 24 document?

03:35:27 25 MR. GOUDISS: You're looking at the

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03:35:29 1 second page.

03:35:29 2 Q. Yes. The second page. The second
03:35:31 3 page.

03:35:33 4 Was this the email that Sterling
03:35:37 5 Stamos, an example of the email that was sent from
03:35:40 6 Sterling Stamos to its investors, after the
03:35:44 7 discovery of the Madoff fraud?

03:35:49 8 A. I believe this is an email copy of
03:35:52 9 the actual correspondence that was sent to the
03:35:56 10 manager, to our investors.

03:36:00 11 Q. Look at the second paragraph
03:36:05 12 discussing that Sterling Stamos Capital Management
03:36:08 13 and the funds it manages do not have investments in
03:36:11 14 any of the funds managed by Madoff Securities. Do
03:36:15 15 you recall how that conclusion was reached at that
03:36:17 16 time before it was reduced to writing here?

03:36:23 17 A. I was in -- I do not recall how that
03:36:25 18 specific wording was reached. I was later told how
03:36:29 19 that wording was reached.

03:36:30 20 Q. Okay. And what were you told?

03:36:32 21 MR. GOUDISS: I object. I would ask
03:36:34 22 that you exclude from your answer any communications
03:36:37 23 you had with counsel. Otherwise, go ahead and
03:36:40 24 answer his question.

03:36:41 25 THE WITNESS: Including internal

03:36:42 1 counsel?

03:36:43 2 MR. GOUDISS: Yes.

03:36:47 3 A. I believe that Mr. Kevin Okimoto --
03:36:52 4 well, I don't know who explained this to me, so I
03:36:55 5 don't know whether it was my attorneys or whether it
03:36:57 6 was Kevin Okimoto who explained how it was drafted.

03:37:00 7 Q. Who drafted this?

03:37:03 8 A. I believe it was a combination of my
03:37:05 9 investment management group, head, which was Kevin
03:37:10 10 Okimoto, our head of communications which was Derek
03:37:14 11 Daley, and with the assistance of our outside public
03:37:18 12 relations advisor, Mr. Dick Letta (phonetic). I was
03:37:24 13 in an investment committee meeting at the time.

03:37:30 14 Q. And is it your understanding that
03:37:32 15 this message was sent to all Sterling Stamos
03:37:35 16 investors?

03:37:36 17 A. That is my understanding.

03:37:39 18 Q. Then if you go to page 1 of Exhibit
03:37:45 19 3, the second email on the page, starting in the
03:37:49 20 middle of the page, from Ashok to Mark Nunnelly
03:37:53 21 dated Saturday the 13th at 2:10 p.m. Could you look
03:37:58 22 at that real quick?

03:37:59 23 A. Um-hum.

03:38:06 24 Q. I want you to focus on the third
03:38:10 25 paragraph, the one that states: "In fact, we turned

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03:38:14 1 down the Madoff funds more than six years ago and
03:38:16 2 told many of our investors, including the Wilpon and
03:38:20 3 Katz families, about our concerns."

03:38:26 4 Did Sterling Stamos turn down an
03:38:30 5 investment opportunity with Madoff?

03:38:33 6 MR. GOUDISS: I object. Go ahead.

03:38:34 7 A. I believe that is an inaccurate
03:38:37 8 statement. I don't believe that we turned down
03:38:38 9 Mr. Madoff more than six years ago, which would have
03:38:42 10 been, from that date, 2002. In fact, I think quite
03:38:45 11 the opposite. We asked to invest with Mr. Madoff as
03:38:49 12 part of our original diversified portfolio and
03:38:52 13 Mr. Katz said he would not allow us to.

03:38:56 14 Q. Okay. So, first, you believe that
03:38:59 15 this an inaccurate statement in that Sterling Stamos
03:39:04 16 did not turn down an opportunity to invest in
03:39:07 17 Madoff?

03:39:08 18 A. Six years prior, I don't believe we
03:39:11 19 were given that opportunity.

03:39:13 20 Q. Was Sterling Stamos ever given the
03:39:16 21 opportunity to invest in Madoff?

03:39:18 22 A. Not to my knowledge.

03:39:23 23 Q. Do you know what Mr. Chachra is
03:39:26 24 referring to in that sentence?

03:39:28 25 A. I can only speculate.

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03:39:32 1 Q. Well, did you have any discussions
03:39:34 2 with Mr. Chachra concerning this email? He did
03:39:38 3 forward it to you later that day.

03:39:42 4 A. Did I have discussions with him after
03:39:44 5 the fact?

03:39:44 6 Q. Yes.

03:39:45 7 A. I believe I did, but I don't recall
03:39:46 8 the specific conversation.

03:39:47 9 Q. Did you ever discuss with him the
03:39:49 10 fact that you believe that the third sentence
03:39:52 11 stating that Sterling Stamos turned down Madoff
03:39:55 12 funds more than six years ago was inaccurate?

03:39:59 13 A. I don't recall having that
03:39:59 14 conversation with him.

03:40:03 15 Q. Did you have that conversation with
03:40:09 16 anyone at Sterling Stamos, that you believed that
03:40:11 17 Mr. Chachra's statement was inaccurate?

03:40:15 18 A. I don't recall this email prior to
03:40:19 19 preparation for coming to this meeting.

03:40:24 20 Q. You see that the email was forwarded
03:40:26 21 to you on that date, correct?

03:40:28 22 A. Yes.

03:40:28 23 Q. You have no reason to believe that
03:40:30 24 you did not in fact receive the email?

03:40:32 25 A. No, I just don't recall having

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03:40:34 1 received it.

03:40:34 2 Q. All right.

03:40:36 3 A. I'm sure I did receive it.

03:40:38 4 Q. Okay.

03:40:42 5 A. I apologize. I don't recall the
03:40:44 6 content of it. I'm sure I received it because it's
03:40:49 7 stated to me.

03:40:53 8 Q. Okay. You said earlier that, we
03:40:54 9 asked to invest with Mr. Madoff as part of our
03:40:57 10 original diversified portfolio and Mr. Katz said he
03:41:00 11 would not allow us to.

03:41:02 12 A. Mr. Madoff would not allow us to.

03:41:05 13 Q. Okay. I'm just reading back the
03:41:07 14 testimony.

03:41:09 15 A. Yes.

03:41:10 16 Q. So, who asked Mr. Madoff if Sterling
03:41:13 17 Stamos could invest with Madoff?

03:41:17 18 A. To be specific, before we set up the
03:41:19 19 company, original thought was to create a portfolio
03:41:22 20 of ten managers, one of whom would be Mr. Madoff.
03:41:27 21 So we would have a diversified portfolio for
03:41:31 22 ourselves and for other investors. I asked Mr. Katz
03:41:34 23 if we could do that. He explained to me that he
03:41:37 24 asked Mr. Madoff if we could make that investment,
03:41:40 25 and explained back to me that Mr. Madoff had

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03:41:42 1 declined that, saying that he didn't take capital
03:41:45 2 from, I believe he described it as fund of funds.

03:41:50 3 Q. Did Mr. Katz tell you anything else
03:41:56 4 as to why Mr. Madoff would not accept an investment
03:42:00 5 from Sterling Stamos into his funds?

03:42:03 6 A. Not that I recall.

03:42:07 7 Q. The second half of the third sentence
03:42:14 8 is saying that, we turned down the Madoff funds more
03:42:19 9 than six years ago and told many of our investors,
03:42:22 10 including the Wilpon and Katz families, about our
03:42:25 11 concerns. What concerns is Mr. Chachra referring to
03:42:33 12 in that email?

03:42:34 13 MR. GOUDISS: I object. Go ahead.

03:42:35 14 A. I believe he's referring to the same
03:42:37 15 set of concerns that we discussed earlier that I
03:42:39 16 raised with investors, A, in the context of
03:42:44 17 diversification and, B, in the context of
03:42:47 18 competition for getting their capital with us as
03:42:49 19 opposed to with Mr. Madoff.

03:42:51 20 Q. Those were the broker-dealer concern,
03:42:54 21 the single-risk manager concern and the
03:43:02 22 front-running concern? Those were the three?

03:43:04 23 MR. GOUDISS: I object.

03:43:06 24 A. I believe what I said was the
03:43:09 25 discussions I had in the context of diversification

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03:43:13 1 and in the context of competition for capital, I
03:43:17 2 would say routinely included a discussion about not
03:43:20 3 putting more than 10 percent of your assets in any
03:43:23 4 one manager, which would be single-manager risk.
03:43:26 5 And raising the issue about best practices, one of
03:43:30 6 which was that we developed, by I guess it was 2005,
03:43:37 7 late 2005, early 2006, separation of broker-dealer
03:43:42 8 from an investment manager.

03:43:45 9 Q. So the issue of broker-dealer
03:43:47 10 separation was raised in the context of
03:43:48 11 diversification?

03:43:49 12 A. In the context of diversification and
03:43:51 13 competition. It was a way for us to explain how
03:43:54 14 what we do is better.

03:43:56 15 Q. And within that context, was the
03:43:59 16 issue of front-running also raised?

03:44:01 17 A. No. I don't believe that I ever
03:44:05 18 recall raising that with investors because I didn't
03:44:09 19 believe it was the case.

03:44:11 20 Q. Maybe raise is the wrong term.
03:44:14 21 Because earlier you talked about having discussions
03:44:17 22 with Saul Katz about the possibility of Madoff
03:44:20 23 front-running, right?

03:44:22 24 A. I recall having conversations with
03:44:23 25 people and discussions with people about the

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03:44:25 1 possibility of front-running. I don't recall myself
03:44:28 2 raising that as an issue.

03:44:30 3 Q. Right. Would the possibility of
03:44:33 4 Madoff front-running be one of the concerns, was
03:44:37 5 that one of the concerns that Mr. Chachra is
03:44:40 6 referring to in this email?

03:44:41 7 MR. GOUDISS: I object. Go ahead.

03:44:44 8 A. It may have been.

03:44:48 9 Q. Over the years, other than
03:44:52 10 front-running, the single-manager risk and the
03:44:56 11 broker-dealer relationship, were there any other
03:44:59 12 concerns that were raised by you or anyone else
03:45:05 13 concerning Madoff?

03:45:06 14 A. I recall one other concern that I
03:45:08 15 had.

03:45:09 16 Q. What was that?

03:45:10 17 A. I once asked Saul, why is it that he
03:45:13 18 said to us we couldn't invest as a fund of funds
03:45:16 19 when we found out later that there were other fund
03:45:19 20 of funds that had invested with him.

03:45:20 21 Q. What other fund of funds were
03:45:22 22 invested with Madoff?

03:45:23 23 A. I believe it was Fairfield and
03:45:25 24 Kingate. Those are the two I remember hearing about
03:45:28 25 and later on reading about Tremont as well.

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03:45:33 1 Q. And what did Saul Katz say in
03:45:36 2 response to your question?

03:45:38 3 A. I don't recall.

03:45:43 4 Q. Did that give you any pause or give
03:45:46 5 you any concern? Strike that.

03:45:49 6 I think you said that was one of the
03:45:50 7 concerns, was that Madoff had turned you down as a
03:45:53 8 fund of funds but had accepted capital from other
03:45:58 9 fund of funds; is that right?

03:45:59 10 A. I felt that we were being -- not we,
03:46:02 11 that Sterling was being treated less favorably than
03:46:06 12 other managers.

03:46:07 13 Q. And you raised that issue with Saul
03:46:09 14 Katz?

03:46:10 15 A. Yes.

03:46:11 16 Q. And what did Saul Katz say in
03:46:13 17 response?

03:46:13 18 A. I don't recall a response.

03:46:18 19 Q. Do you know if Saul Katz raised that
03:46:20 20 question with Madoff?

03:46:21 21 A. I don't know.

03:46:27 22 MR. GOUDISS: I don't know if you've
03:46:29 23 established, is there a time frame for this?

03:46:31 24 MR. BOHORQUEZ: I think I said at any
03:46:35 25 time.

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03:46:35 1 MR. GOUDISS: Yeah, no, but when you
03:46:37 2 developed --

03:46:37 3 A. My assumption is that all of this is
03:46:39 4 prior to December 12th.

03:46:41 5 Q. Yes. We've been discussing from '02
03:46:42 6 to '08.

03:46:44 7 A. I don't recall when these
03:46:45 8 conversations occurred, by the way, but it would
03:46:48 9 have been before December 12th.

03:46:50 10 Q. Right, okay.

03:46:52 11 A. 2008.

03:46:53 12 Q. Thank you for clarifying that.

03:46:58 13 And when did you find out that Madoff
03:47:01 14 accepted investments from other fund of funds?

03:47:04 15 A. I don't recall when. I just recall
03:47:08 16 sometime in that time frame, '02 to '08, I found
03:47:12 17 out. I don't recall when it was.

03:47:20 18 Q. Looking at the fourth paragraph of
03:47:23 19 Mr. Chachra's email, he says, "Notwithstanding our
03:47:27 20 concerns, the Wilpon and Katz families continued to
03:47:31 21 invest with Madoff Securities."

03:47:37 22 Did you have a discussion with
03:47:40 23 Mr. Chachra -- strike that.

03:47:42 24 Would that -- do you think that is an
03:47:53 25 accurate characterization of the issues that you or

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03:48:00 1 anyone at Sterling Stamos raised with Saul Katz or
03:48:04 2 anyone at Sterling?

03:48:06 3 MR. GOUDISS: I object.

03:48:08 4 A. I think that's --

03:48:09 5 MR. GOUDISS: Go ahead.

03:48:10 6 A. I think that that is an
03:48:12 7 understatement of what the Wilpon and Katz response
03:48:16 8 was.

03:48:16 9 Q. Why do you think that was an
03:48:18 10 understatement?

03:48:20 11 A. Because the week prior they informed
03:48:22 12 me that they intended to redeem from us and put more
03:48:26 13 capital with Madoff Securities. So it was not just
03:48:30 14 that they continued to invest, but they had intended
03:48:33 15 to take capital from us and put it with Madoff.
03:48:36 16 Notwithstanding the concerns, they would have gone
03:48:42 17 to increase their investments. At least that's what
03:48:43 18 they expressed, that's what Mr. Katz expressed to
03:48:46 19 me.

03:48:47 20 Q. And when Mr. Katz expressed to you
03:48:48 21 that he was going to redeem money from Sterling
03:48:53 22 Stamos and invest it in Madoff, what did you say?
03:49:01 23 At that time. That specific discussion.

03:49:03 24 A. I don't recall the specific day it
03:49:04 25 occurred, but I do know it occurred in the week

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03:49:06 1 before the fraud was discovered. Because it was a
03:49:09 2 painful conversation for me to hear. I remember him
03:49:12 3 saying something along the lines of, Peter, I'm very
03:49:16 4 disappointed. Your fund is down on an unlevered
03:49:21 5 basis 18 percent and Madoff is up 12. I think I
03:49:24 6 have to redeem all of my capital or a substantial
03:49:27 7 portion of my capital from you and put it with
03:49:31 8 Bernie Madoff.

03:49:32 9 Q. And what did you say in response?

03:49:35 10 A. I don't recall the specific words,
03:49:36 11 but I do recall trying to defend our position.

03:49:42 12 Q. And what did you say to defend your
03:49:44 13 position, to Saul Katz at that discussion?

03:49:47 14 A. Generally, that we were a diversified
03:49:51 15 portfolio of managers and that that was better for
03:49:55 16 him than to have all his capital in one manager, and
03:49:59 17 I believe I said, particularly in a manager whose
03:50:02 18 strategy we cannot explain.

03:50:05 19 Q. And when you say a particular manager
03:50:10 20 whose strategy you cannot explain, what are you
03:50:12 21 referring to specifically?

03:50:14 22 A. I'm referring to specifically not
03:50:16 23 only the investment due diligence that we developed
03:50:20 24 post-2007, over the 2007-2008 period, which was to
03:50:27 25 require of managers that they explain their strategy

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03:50:32 1 in a way that we could explain to our investors and
03:50:35 2 that put a big block on us investing as fiduciaries
03:50:40 3 in black boxes. Such as D.E. Shaw, for example.

03:50:43 4 Q. Or such as Madoff?

03:50:45 5 A. At that time, if what we heard about
03:50:49 6 Madoff were true, he would not have made it into our
03:50:52 7 portfolio as a -- he would not have made the
03:50:54 8 transparency requirements or the operational due
03:50:56 9 diligence requirements, or the investment due
03:50:58 10 diligence requirements because of transparency.

03:51:00 11 Q. And did you share the fact that
03:51:02 12 Madoff would not have passed those due diligence
03:51:05 13 criteria with Mr. Katz?

03:51:08 14 A. At any time or at that particular
03:51:10 15 time?

03:51:11 16 Q. Let's start with this discussion that
03:51:13 17 you had, I think you said about a week before
03:51:16 18 December 11th.

03:51:18 19 A. I don't believe that I did it at that
03:51:19 20 particular time. I think I just put up a general
03:51:22 21 defense. But I do recall having that conversation
03:51:24 22 with him at some point over the 2007-2008 period.
03:51:28 23 2008 period, I believe.

03:51:30 24 Q. And what specifically did you tell
03:51:32 25 Mr. Saul Katz during those discussions?

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03:51:36 1 A. What I recall is a conversation at a
03:51:39 2 board meeting in which Mr. Katz suggested that we
03:51:46 3 create, I believe it was in early 2008, January or
03:51:50 4 February, that we create a fund of black boxes, of
03:51:55 5 which Madoff would be, if you will, the anchor
03:51:58 6 tenant. And in the context of that, I know of at
03:52:02 7 least two or three conversations that occurred.

03:52:06 8 Q. And what was the substance of those
03:52:09 9 conversations?

03:52:10 10 A. One conversation I know of was that
03:52:11 11 in the board meeting Kevin Dunleavy expressed
03:52:15 12 concern about that, that it wouldn't meet Merrill
03:52:17 13 Lynch's due diligence requirements. He was a board
03:52:20 14 member and member of the -- a senior executive at
03:52:22 15 Merrill Lynch, I believe vice-chairman. A
03:52:26 16 vice-chairman.

03:52:27 17 Another concern that was raised by my
03:52:30 18 father, I believe he said something along the lines
03:52:32 19 of, but, Saul, we don't invest in black boxes. And
03:52:38 20 I don't recall whether I said something at that
03:52:40 21 meeting specifically, but that would have been one
03:52:43 22 of the conversations I assume I had with him
03:52:46 23 sometime over that time frame, following up on the
03:52:50 24 meeting because we decided not to do it.

03:52:52 25 Q. What was Saul Katz's response to

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03:52:55 1 Mr. Dunleavy's and your father's comments about not
03:52:58 2 investing in black boxes such as Madoff?

03:53:00 3 A. I think he was very disappointed. I
03:53:03 4 think he wanted to put more capital into those kinds
03:53:06 5 of portfolios given the market volatility that we
03:53:09 6 were seeing in 2008 and 2007, for that matter.

03:53:12 7 Q. In the discussion you had with Saul
03:53:15 8 Katz about a week before December 11th when he told
03:53:20 9 you he wanted to redeem money from Sterling Stamos
03:53:24 10 and invest in Madoff, was part of your defense that
03:53:32 11 it was unusual that despite the drop in the market
03:53:37 12 that Madoff's returns were remaining so consistent?

03:53:40 13 A. I don't recall that as being part of
03:53:41 14 my defense. I actually recall the opposite, that we
03:53:45 15 found in past periods of crisis that black boxes
03:53:49 16 were in fact those kinds of managers that had a
03:53:52 17 higher probability of performing well when markets
03:53:56 18 collapsed.

03:53:58 19 Q. My question was -- let me try to
03:54:00 20 rephrase it.

03:54:01 21 In that discussion about a week
03:54:07 22 before December 11th with Saul Katz, did you
03:54:11 23 highlight the fact that -- your concern or an issue
03:54:18 24 with the fact that Madoff's returns were still
03:54:21 25 consistent despite the deterioration of the market?

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03:54:24 1 MR. GOUDISS: I object. Go ahead,
03:54:26 2 tell him again.

03:54:27 3 A. I don't recall expressing that
03:54:29 4 concern to him. I recall expressing a defense of my
03:54:35 5 own performance relative to the market.

03:54:37 6 Q. Right. Did you ever raise that issue
03:54:39 7 with Saul Katz, the fact that Madoff's returns were
03:54:45 8 very -- were consistent over time?

03:54:48 9 A. I don't recall expressing that
03:54:51 10 concern. I recall expressing that as an objective
03:54:54 11 of one of the criteria we looked for in managers.

03:55:00 12 Q. I think earlier you had said that
03:55:04 13 Mr. Dunleavy had raised two concerns that he had
03:55:09 14 with Madoff in the 2007 time frame. That was the
03:55:13 15 broker-dealer issue.

03:55:15 16 A. Um-hum.

03:55:15 17 Q. And the front-running issue.

03:55:20 18 A. Possibility.

03:55:21 19 Q. Possibility. Other than those two
03:55:24 20 issues, did Mr. Dunleavy raise any other concerns
03:55:28 21 with you that he had with Madoff?

03:55:30 22 MR. GOUDISS: I object. Asked and
03:55:31 23 answered. Go ahead.

03:55:33 24 A. I don't recall any others.

03:55:35 25 Q. Do you know if Mr. Dunleavy shared

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03:55:39 1 those two concerns that he had with Madoff with Saul
03:55:43 2 Katz?

03:55:44 3 A. I believe he did.

03:55:46 4 Q. When did he share those concerns with
03:55:48 5 Mr. Katz?

03:55:50 6 A. I believe contemporaneous, in the
03:55:52 7 contemporaneous time frame that he shared it with
03:55:54 8 me, it may have been in the same meeting and it may
03:55:57 9 have been in a follow-up meeting with Mr. Katz,
03:56:00 10 alone or a follow-up phone conversation with him.

03:56:02 11 Q. And in the meeting that you attended
03:56:06 12 with Mr. Saul Katz and Dunleavy, what was Saul
03:56:11 13 Katz's response to Mr. Dunleavy's concerns?

03:56:14 14 A. First of all, I don't recall whether
03:56:16 15 we were in the same meeting or whether it was a
03:56:18 16 conversation that occurred afterward. So I can't
03:56:20 17 tell you specifically what his reaction was because
03:56:22 18 I may not have actually been in the room.

03:56:24 19 Q. Well, do you know what Saul Katz's
03:56:27 20 reaction was to Dunleavy's concerns?

03:56:29 21 MR. GOUDISS: I object. Asked and
03:56:30 22 answered. Go ahead.

03:56:32 23 A. I don't know, I can't say with
03:56:34 24 certainty. I can say what Mr. Dunleavy said to me.

03:56:37 25 Q. What did he say?

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03:56:39 1 A. I believe at some time during, prior
03:56:42 2 to that -- post that conversation, Mr. Dunleavy
03:56:44 3 explained to me that Saul rejected his arguments.

03:56:48 4 Q. Did Mr. Dunleavy say anything else?

03:56:51 5 A. Not that I recall.

03:57:01 6 Q. The last paragraph of Ashok's email,
03:57:03 7 if you can turn back to Exhibit 3. Do you see that?

03:57:08 8 A. Um-hum.

03:57:12 9 Q. He writes: "We are trying to inform
03:57:15 10 all of our investors that our due diligence process
03:57:18 11 rejected Madoff but, unfortunately, the Katz and
03:57:22 12 Wilpon families maintained their investment,
03:57:25 13 independent of our advice."

03:57:27 14 What due diligence process that
03:57:30 15 rejected Madoff is Mr. Chachra referring to?

03:57:34 16 A. I believe what he's referring to is
03:57:35 17 that the due diligence process that we'd established
03:57:38 18 for other managers, if it had occurred, would have
03:57:40 19 rejected this because we never, to my knowledge,
03:57:43 20 conducted due diligence on Bernard Madoff.

03:57:48 21 Q. But Mr. Chachra uses the past tense
03:57:51 22 in that email; isn't that right?

03:57:53 23 A. I believe -- that's correct.

03:57:55 24 Q. So the way this is phrased, he's
03:57:57 25 indicating that due diligence process was done and

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03:58:00 1 that it rejected Madoff; isn't that right?

03:58:04 2 MR. GOUDISS: Objection.

03:58:05 3 A. I believe this is marketing on
03:58:07 4 behalf, I think this is Ashok doing marketing. I
03:58:16 5 think it should be written it would have if we'd
03:58:19 6 done due diligence.

03:58:25 7 Q. Okay. And did you have any
03:58:26 8 discussions with Ashok that he was engaging in
03:58:30 9 marketing?

03:58:32 10 A. I don't recall the conversation with
03:58:33 11 Ashok about this particular piece.

03:58:39 12 Q. Well, did you have any discussions
03:58:41 13 with Ashok post the fraud about communications with
03:58:47 14 investors concerning any analysis that Sterling
03:58:51 15 Stamos had done of Madoff in the past?

03:58:55 16 A. What I do recall is general
03:58:57 17 conversations not only with Ashok but generally
03:58:59 18 speaking with my senior management team that our due
03:59:02 19 diligence process would have rejected this, if in
03:59:06 20 fact those facts were true. That he had a
03:59:09 21 broker-dealer and so on.

03:59:25 22 Q. In the second half of the last
03:59:27 23 paragraph when he says that the Katz and Wilpon
03:59:29 24 families maintained their investment independent of
03:59:33 25 our advice, is that in reference to the various

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03:59:42 1 concerns that were discussed over the years, or
03:59:44 2 anything else?

03:59:45 3 MR. GOUDISS: I object to the form.
03:59:46 4 You may answer.

03:59:48 5 A. Can you be more specific?

03:59:50 6 Q. Well, he writes very specifically
03:59:52 7 that the due diligence process rejected Madoff and
03:59:55 8 unfortunately Katz and Wilpon families maintained
03:59:59 9 their investment independent of our advice.

04:00:03 10 Was there ever any formal
04:00:08 11 recommendation to the Katz and Wilpon families that
04:00:12 12 they should withdraw their funds from Madoff?

04:00:15 13 MR. GOUDISS: I object. Go ahead.

04:00:17 14 A. So, to be clear, we could only advise
04:00:21 15 on the funds that are with us. As a registered
04:00:25 16 investment advisor that's my requirement. What I
04:00:27 17 can testify to is what I said to Mr. Katz. I can't
04:00:31 18 testify as to what Ashok said to Mr. Katz.

04:00:34 19 Q. And with respect to what you said to
04:00:36 20 Mr. Katz, is the sum and substance essentially what
04:00:40 21 we've discussed earlier this afternoon?

04:00:42 22 A. There's more.

04:00:43 23 Q. What else did you tell him?

04:00:45 24 A. What I remember having a series of
04:00:47 25 conversations with him about was the following:

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04:00:50 1 That as a fiduciary I could not invest in a manager,
04:00:55 2 what I'd learned, I could not invest in a manager
04:00:57 3 like Mr. Madoff, for the reasons we discussed. But
04:01:00 4 that as an individual, if he wanted to keep his own
04:01:03 5 capital in a manager like that, as long as it was
04:01:07 6 less than 10 percent, that was appropriate and I
04:01:10 7 would put it in the same category as any other
04:01:12 8 recommendation for a manager that you don't have
04:01:16 9 full due diligence on and diversification for.

04:01:24 10 Q. And when did you have that discussion
04:01:26 11 with Mr. Katz?

04:01:28 12 A. I had a series of conversations with
04:01:29 13 him about that over the course of 2007 and 2008.

04:01:36 14 Q. Were there any other issues with
04:01:40 15 respect to investing in Madoff that you advised
04:01:45 16 Mr. Katz about?

04:01:46 17 A. I didn't advise him to his
04:01:48 18 investments. I couldn't, because he was investing
04:01:51 19 with Madoff. All I could say was in theory and in
04:01:54 20 general this is what one needs to do. Because I'd
04:01:57 21 never done a due diligence on Mr. Madoff. I had
04:02:00 22 never been to his office, no one on our team, to my
04:02:04 23 knowledge, had ever done any formal or otherwise
04:02:06 24 review of Mr. Madoff's operations.

04:02:08 25 Q. Putting aside the term

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04:02:09 1 "recommended --"

04:02:10 2 A. Recommended and advised.

04:02:10 3 Q. Yeah, put those aside.

04:02:15 4 What other -- are there any other
04:02:16 5 issues that you discussed with Mr. Katz concerning
04:02:21 6 Madoff --

04:02:21 7 A. Yes.

04:02:22 8 Q. -- other than the ones we've
04:02:23 9 discussed?

04:02:24 10 A. Yes.

04:02:24 11 Q. What else?

04:02:25 12 A. I'm embarrassed to say that I said to
04:02:27 13 Mr. Katz on a number of occasions that my assumption
04:02:29 14 is that Mr. Madoff is the most honest and honorable
04:02:33 15 man, among the most honest and honorable men that we
04:02:38 16 will ever meet. Number one. And, number two, that
04:02:41 17 he is perhaps one of the -- my assumption is he's
04:02:43 18 perhaps one of the best hedge fund managers in
04:02:45 19 modern times.

04:02:47 20 Q. With respect to the first assumption,
04:02:50 21 that Mr. Madoff is the most honest and honorable man
04:02:54 22 that you'll ever meet, what was that based on?

04:02:57 23 A. Based on his reputation, based upon
04:03:01 24 his long track record, based upon having seen him
04:03:05 25 receive these awards and the positions that he held

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04:03:09 1 as chairman of the NASDAQ, having built this great
04:03:14 2 company. He was, quite frankly, legendary, to all
04:03:18 3 of us. And I stood in awe of that with Mr. Katz,
04:03:23 4 and I assumed that.

04:03:27 5 Q. But despite all that, the Madoff fund
04:03:29 6 would not have passed your due diligence tests,
04:03:31 7 right?

04:03:32 8 A. As a fiduciary I couldn't put it in
04:03:34 9 my portfolio for all kinds of reasons by that time.
04:03:39 10 In early 2002 we could have because at that time we
04:03:40 11 were investing in any closed manager that had a good
04:03:42 12 reputation that we could get into. But by 2007,
04:03:46 13 2008 with the new sets of requirements and
04:03:49 14 operational due diligence, risk management and
04:03:51 15 investment due diligence that we would have imposed,
04:03:54 16 it would have been stopped at the door the moment we
04:03:56 17 found any of these issues.

04:03:59 18 Q. Did you express the fact that Madoff
04:04:01 19 would not have passed your due diligence
04:04:04 20 requirements to Saul Katz?

04:04:06 21 MR. GOUDISS: I object.

04:04:07 22 A. I believe that I expressed it and I
04:04:09 23 know for a matter of fact that -- I believe that, I
04:04:15 24 believe that Mr. Dunleavy expressed that at the
04:04:19 25 board meeting as well.

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04:04:27 1 Q. Thank you. Okay.

04:04:29 2 Prior to 2005, before Sterling Stamos
04:04:33 3 became a registered advisor, in that time frame did
04:04:40 4 you ever advise or recommend to Mr. Katz not to
04:04:44 5 invest in Madoff?

04:04:46 6 A. Again, could you rephrase the
04:04:49 7 question without advice or recommendation and then
04:04:51 8 maybe I can answer.

04:04:52 9 Q. Well, maybe I don't understand --
04:04:54 10 maybe I don't have enough of an understanding of the
04:04:56 11 regulations here, but before you became a registered
04:05:03 12 investment advisor, the question is did you
04:05:06 13 recommend to Saul Katz not to invest in Madoff?

04:05:12 14 A. To not invest in Madoff?

04:05:14 15 Q. Yes.

04:05:15 16 A. No, I never told him to not invest in
04:05:18 17 Madoff, to my recollection. What I recall telling
04:05:20 18 him was don't put more than 10 percent of your
04:05:23 19 assets in any one manager. Put the other 90 percent
04:05:26 20 with us.

04:05:38 21 Q. Turn to 27.

04:05:50 22 Before we get to the next document,
04:05:53 23 what board meeting are you referencing -- what board
04:05:58 24 meeting did Mr. Dunleavy express that Madoff would
04:06:01 25 not have passed Sterling Stamos' due diligence?

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04:06:06 1 A. He didn't say Sterling Stamos.
04:06:08 2 Merrill Lynch's I believe is what he said.

04:06:10 3 Q. Pardon?

04:06:11 4 A. Merrill Lynch, I think he was
04:06:12 5 representing Merrill Lynch.

04:06:14 6 Q. Oh, okay. So when you said earlier
04:06:16 7 that -- I'd asked you: Did you express the fact
04:06:18 8 that Madoff would not have passed your due diligence
04:06:21 9 requirements to Saul Katz?

04:06:24 10 Answer: I believe that I expressed
04:06:25 11 it and I know for a matter of fact that I believe
04:06:28 12 that Mr. Dunleavy expressed that at the board
04:06:30 13 meeting as well.

04:06:32 14 A. To be clear, I expressed it -- if I
04:06:34 15 expressed it I would have expressed it with regard
04:06:36 16 to Sterling Stamos. I believe that if Mr. Dunleavy
04:06:39 17 expressed it, when he expressed it, he would have
04:06:42 18 expressed it with regard to Merrill Lynch, which
04:06:44 19 owned about 50 percent of the firm.

04:06:47 20 Q. And what board meeting are you
04:06:50 21 referring?

04:06:51 22 A. I'm referring to a board meeting that
04:06:53 23 occurred in I believe January or February of 2008,
04:06:56 24 which was the board of Sterling Stamos. 50 percent
04:07:04 25 of which is Bank of America and 50 percent of which

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04:07:07 1 was the other members that I identified earlier this
04:07:09 2 morning.

04:07:10 3 Q. And was that the same board meeting
04:07:12 4 when Saul Katz raised the proposal to invest in
04:07:16 5 Madoff and other black boxes?

04:07:19 6 A. I believe that's correct. I think he
04:07:21 7 proposed creating a fund of funds or a feeder fund
04:07:26 8 of multiple black boxes, I think as he referred to
04:07:33 9 it.

04:07:55 10

04:07:57 11

04:08:01 12

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REDACTED

Q. Just so we're clear for the record.

If you look at the second paragraph:
"We're thinking about delaying Lone Pine (5 million)
until February 1 because they haven't allowed us to
complete operational and risk due diligence."

What were you referring to there?

A. Precisely what it says, the
operational due diligence wasn't completed and the
risk due diligence was yet to be completed.

Q. Earlier today we discussed a laundry
list of operational and risk due diligence that

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04:10:41 1 Sterling Stamos engages in.

04:10:42 2 A. Yes.

04:10:42 3 Q. Is that what you're referring to here
04:10:45 4 shorthand?

04:10:46 5 A. That is correct.

04:10:50 6 Q. Why were they not allowing you to
04:10:52 7 complete the due diligence; do you recall?

04:10:54 8 A. I think it was only in the context of
04:10:57 9 time frame. In other words, it wouldn't get done by
04:10:59 10 month end. It would probably get done in the first
04:11:02 11 two weeks of the new year. It was the holiday
04:11:06 12 season.

04:11:06 13 Q. Then in the third paragraph you go on
04:11:08 14 to write: "If that means losing the allocation, I
04:11:11 15 would recommend losing the allocation. This is the
04:11:14 16 ops and risk discipline that kept us out of Madoff."

04:11:18 17 I want to focus on the second
04:11:20 18 sentence of that email where you write that this is
04:11:22 19 the ops and risk discipline that kept us out of
04:11:27 20 Madoff. What did you mean by that when you wrote
04:11:29 21 that?

04:11:29 22 A. I remember very specifically what I
04:11:31 23 was referring to. There was a lot of pressure on us
04:11:33 24 in 2008, in particular, to add a manager like
04:11:37 25 Bernard Madoff to our portfolio because of market

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04:11:39 1 volatility, by Mr. Katz, who was one of our largest
04:11:43 2 investors. And we refused to do so.

04:11:48 3 Q. Who was pressuring you to add
04:11:55 4 managers like Bernard Madoff to your portfolio?

04:11:59 5 A. Mr. Katz. I apologize, I don't know
04:12:04 6 whether the word was pressuring or strongly
04:12:06 7 encouraging, but he would like us -- he made it
04:12:08 8 clear to us he would like us to have those kinds of
04:12:11 9 investments.

04:12:12 10 Q. And as part of pressuring you to
04:12:14 11 include managers like Madoff in your portfolio --
04:12:20 12 actually, strike that.

04:12:21 13 When you wrote this is the ops and
04:12:26 14 risk discipline that kept us out of Madoff, you're
04:12:30 15 writing that in the past tense; is that right?

04:12:33 16 MR. GOUDISS: I object to the form.
04:12:34 17 Go ahead.

04:12:35 18 A. I'm writing about that and I'm
04:12:37 19 thinking about that in the context of whether it was
04:12:39 20 2008 or 2007, that time frame.

04:12:44 21 Q. But this sentence doesn't refer to
04:12:45 22 other managers like Madoff. It refers to Madoff
04:12:49 23 specifically; isn't that right?

04:12:52 24 A. This is a reference to the ops and
04:12:55 25 risk discipline that kept us out of Madoff, as an

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04:12:58 1 example, that everybody was focused on at that time.

04:13:02 2 Q. Right. I guess what I'm trying to
04:13:04 3 understand is when you wrote that it kept us out of
04:13:06 4 Madoff, what were you referring to specifically with
04:13:12 5 respect to Madoff? Not to other investors, not to
04:13:17 6 other investment managers.

04:13:19 7 MR. GOUDISS: I object. Go ahead.

04:13:21 8 A. Could you repeat the question.

04:13:25 9 Q. This sentence suggests or indicates
04:13:30 10 that you had conducted an ops and risk discipline of
04:13:34 11 Madoff and as a result of that ops and risk
04:13:36 12 discipline you did not invest in Madoff.

04:13:42 13 MR. GOUDISS: I object. I don't
04:13:42 14 think that's what it says at all, but go ahead.

04:13:45 15 A. I don't -- it may suggest that to
04:13:47 16 some people. My sense of this was this was my
04:13:49 17 trying to separate, again, ourselves from Madoff and
04:13:51 18 from Sterling, because that was a concern of all of
04:13:55 19 our investors at the time. That was my form of
04:13:58 20 marketing, if you will. This was the kind of ops
04:14:02 21 and risk due diligence that kept us out. The kind
04:14:06 22 of is probably the better way to phrase it.

04:14:09 23 Q. The kind of ops and risk.

04:14:12 24 A. Yeah.

04:14:12 25 Q. Right.

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04:14:15 1 A. In other words, we could not make an
04:14:17 2 investment in a manager until we completed ops and
04:14:20 3 risk due diligence, period.

04:14:23 4 Q. And that is one of the reasons why
04:14:24 5 you did not invest in Madoff, is that what you're
04:14:27 6 trying to say here?

04:14:28 7 MR. GOUDISS: I object. Go ahead.

04:14:29 8 A. I don't think that's the reason --
04:14:31 9 I'm not trying to express that to him there. I'm
04:14:33 10 trying to express to him that that is the ops and
04:14:36 11 risk due diligence that is going to be applied to
04:14:38 12 all of our investments. I'm trying to separate
04:14:43 13 ourselves out from Sterling Equities and from
04:14:51 14 Madoff.

04:14:52 15 Q. Before we get to the next one, did
04:15:33 16 you conduct any ops and risk analysis of Madoff at
04:15:37 17 any time?

04:15:39 18 A. Not to my knowledge. When you say
04:15:40 19 you, you mean the firm?

04:15:41 20 Q. Yes.

04:15:42 21 A. I don't believe the firm ever
04:15:43 22 conducted any due diligence on Mr. Madoff or his
04:15:46 23 firm.

04:15:48 24 Q. Well, I'm not asking due diligence as
04:15:50 25 a term of art. But I'm asking in terms of the ops

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04:15:53 1 and risk discipline that you're referring to in that
04:15:56 2 email in Exhibit 4, did you conduct any aspect of
04:16:00 3 ops and risk discipline on Madoff?

04:16:04 4 MR. GOUDISS: I object. Go ahead.

04:16:07 5 A. If you're referring to any aspect, at
04:16:10 6 the most surface level, the first question would be
04:16:13 7 asked is what kind of investment strategy is this.
04:16:16 8 And one of his investment strategies, once we
04:16:20 9 decided that it's a black box, we had made a
04:16:22 10 decision not to invest in black boxes. So that
04:16:25 11 would have stopped us from even starting the
04:16:28 12 process.

04:16:28 13 Q. So you did conduct that analysis of
04:16:30 14 Madoff because you concluded that it was a black
04:16:34 15 box?

04:16:35 16 MR. GOUDISS: I object. Go ahead.

04:16:38 17 Q. You can answer.

04:16:40 18 A. I don't consider that due diligence.
04:16:41 19 I think of due diligence as a term of art, that
04:16:45 20 means that we go to formally review a manager, we
04:16:49 21 interview the manager, we go on site, we meet with
04:16:52 22 their staff and verify facts and collect
04:16:55 23 information. We didn't do any of that. As I
04:16:56 24 described earlier, the only conversations I ever
04:16:58 25 remember having with Mr. Madoff were social in

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04:17:00 1 nature and one discussion around his algorithm.

04:17:04 2 Q. That's what I'm trying to do, is
04:17:05 3 separate out the term of art of due diligence and
04:17:08 4 break down some of the components that may be part
04:17:10 5 of due diligence.

04:17:11 6 A. Yes.

04:17:12 7 Q. One component is evaluating the
04:17:14 8 investment strategy of the firm manager, right?

04:17:17 9 A. Investment strategy, correct.

04:17:19 10 Q. And Sterling Stamos conducted some
04:17:23 11 analysis of Madoff's investment strategy; isn't that
04:17:28 12 right?

04:17:29 13 A. The firm, to my knowledge, the firm
04:17:31 14 did not conduct due diligence of Mr. Madoff. We
04:17:35 15 looked at his returns as a competitor of ours.

04:17:39 16 Q. That's not what I asked, Mr. Stamos.
04:17:43 17 What I asked is, and I think you already testified
04:17:45 18 that you did it, but I just want to clarify.

04:17:49 19 Did Sterling Stamos analyze Madoff's
04:17:53 20 investment strategy? Apart from any due diligence,
04:17:57 21 just did they analyze, did you analyze Madoff's
04:18:01 22 investment strategy?

04:18:02 23 A. I don't know what you mean by
04:18:03 24 analyze. That's, again -- I just don't know what
04:18:07 25 you mean by analyze.

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04:18:09 1 Q. Did Sterling Stamos come to the
04:18:12 2 conclusion that Madoff employed a black box strategy
04:18:20 3 at any time?

04:18:21 4 A. I can answer for myself. I don't
04:18:23 5 think I can answer for the firm because when the
04:18:25 6 firm makes a conclusion, it is a formal conclusion
04:18:28 7 as part of a formal process.

04:18:30 8 Q. I'm not asking about a formal
04:18:32 9 process.

04:18:33 10 A. Yes. So, informal, did we come to
04:18:35 11 the conclusion in general that that was his
04:18:37 12 strategy? Yes.

04:19:00 13 (Exhibit PS-5 marked for
04:19:05 14 identification.)

04:19:06 15

04:19:09 16

04:19:13 17

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- 04:21:08 10
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- 04:21:19 15
- 04:21:24 16
- 04:21:27 17
- 04:21:30 18
- 04:21:31 19
- 04:21:31 20
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REDACTED

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04:22:01 1 Q. The third sentence you write: "That
04:22:04 2 firm and fund wouldn't make it through our risk and
04:22:07 3 ops controls, lack of transparency, no third-party
04:22:11 4 administrator, et cetera." What lack of
04:22:15 5 transparency are you referring to in your email with
04:22:19 6 respect to Madoff?

04:22:21 7 A. By this time in our due diligence
04:22:23 8 process we had raised the concern of eliminating all
04:22:27 9 black boxes in our portfolio. Black boxes by
04:22:31 10 definition, not transparent.

04:22:34 11 Q. Were there any other -- so, the fact
04:22:39 12 that Madoff was a black box, it lacks transparency
04:22:43 13 under your standards?

04:22:44 14 A. The same characteristic of, for
04:22:46 15 example, D.E. Shaw which was a black box that we had
04:22:49 16 invested in prior.

04:22:55 17 Q. When you use the term "transparency,"
04:22:57 18 what do you understand transparency to mean in this
04:23:00 19 context?

04:23:00 20 A. In this context, what I just said.

04:23:03 21 Q. Are there any other aspects of
04:23:05 22 transparency?

04:23:06 23 A. Yes.

04:23:06 24 Q. What are they?

04:23:09 25 A. For us it became the filling out of

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04:23:10 1 a -- the formal filling out of a transparency
04:23:13 2 report.

04:23:13 3 Q. What are the issues that you -- what
04:23:17 4 are the issues that are evaluated in your
04:23:20 5 transparency reports?

04:23:21 6 A. Generally speaking?

04:23:22 7 Q. Yes.

04:23:23 8 A. The largest position sizes and
04:23:26 9 exposure and leverage.

04:23:28 10 Q. Anything else?

04:23:31 11 A. I'm sure there are other things but
04:23:32 12 those are the things in general that I recall.

04:23:40 13 Q. In terms of position sizes and
04:23:43 14 exposure and leverage, were those other issues that
04:23:46 15 you believe Madoff may not have passed under your
04:23:51 16 due diligence --

04:23:52 17 MR. GOUDISS: I object.

04:23:54 18 A. I don't -- the part that I referred
04:23:55 19 to was the absence of transparency in terms of the
04:23:58 20 black box. That is another form of transparency
04:24:01 21 that we're concerned about.

04:24:03 22 Q. And that's, as far as you recollect,
04:24:06 23 that's the only aspect of transparency you're
04:24:08 24 referring to in this email?

04:24:10 25 A. As far as I can recollect that's what

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04:24:11 1 I was referring to.

04:24:13 2 Q. Then you next write that no
04:24:17 3 third-party administrator, et cetera. What did you
04:24:20 4 mean by no third-party administrator?

04:24:23 5 A. I think I was conflating of something
04:24:27 6 we had just learned the last week. I don't believe
04:24:29 7 that the no third-party administrator was part of
04:24:33 8 our operational due diligence at that time. I
04:24:36 9 believe that that was one of the issues that we
04:24:37 10 started to talk about in the context of what we just
04:24:41 11 found out on Friday about the possibility that
04:24:44 12 Gabriel had some of its capital in cash invested
04:24:49 13 with Madoff.

04:24:49 14 Q. So the no third-party administrator
04:24:52 15 issue was something you became aware of with respect
04:24:55 16 to Madoff after the fraud?

04:24:57 17 A. With respect to all managers after
04:25:01 18 the fraud and after the issue with Merkin.

04:25:06 19 Q. In the next sentence you go on to
04:25:10 20 write: "Unfortunately, our partners, Saul and Fred,
04:25:13 21 against our recommendations, invested as individuals
04:25:17 22 and through their real estate firm." And there you
04:25:20 23 use the word "recommendations." Now, what did you
04:25:23 24 mean by that statement?

04:25:24 25 A. I was stretching it, because I know

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04:25:26 1 what my recommendation was to them. My
04:25:28 2 recommendation was to not put more than ten percent
04:25:31 3 of their personal assets there, period.

04:25:34 4 Q. And is that the only recommendation
04:25:36 5 that you're referring to in that email?

04:25:43 6 A. As I said, I think I was trying to
04:25:45 7 separate myself from Madoff, so I was probably
04:25:48 8 stretching it by marketing more. I didn't -- I
04:25:51 9 don't recall ever recommending to Saul and Fred that
04:25:54 10 they have no capital with Madoff, that they just not
04:25:58 11 put more than 10 percent of their assets with
04:26:00 12 Madoff.

04:26:01 13 Q. But that paragraph doesn't reference
04:26:03 14 any single-manager risk issues --

04:26:06 15 A. No.

04:26:06 16 Q. -- or anything; you would agree with
04:26:09 17 that, right?

04:26:09 18 A. Correct.

04:26:14 19 Q. If you go on to the third paragraph,
04:26:23 20 you write: "We've been doing the same for your
04:26:26 21 portfolio manager, my manager, looking for black
04:26:29 22 boxes and administrative irregularities."

04:26:33 23 What do you mean by administrative
04:26:35 24 irregularities?

04:26:38 25 A. All of the issues that are identified

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04:26:40 1 in our operational due diligence list, we were in
04:26:42 2 the process of conducting all of those for all of
04:26:44 3 his managers. All of his managers and all of our
04:26:46 4 managers. This is referring to his managers, his
04:26:50 5 portfolio.

04:26:52 6 Q. And did you ever notice any
04:26:55 7 administrative irregularities with Madoff?

04:26:58 8 MR. GOUDISS: Object to the form of
04:27:01 9 the question.

04:27:01 10 A. We never did due diligence on Madoff.

04:27:04 11 Q. Not asking if you did any due
04:27:05 12 diligence per se, but -- let me rephrase the
04:27:11 13 question.

04:27:12 14 As part of your due diligence, what
04:27:14 15 are some of the administrative irregularities that
04:27:16 16 you look to when evaluating a firm?

04:27:19 17 A. We look for best practices.

04:27:20 18 Q. And what are those?

04:27:22 19 A. Some of the issues we discussed:
04:27:24 20 Separation of the broker-dealer from the investment
04:27:27 21 manager, independent auditor, strong back-office
04:27:37 22 infrastructure.

04:27:38 23 Q. Now, we discussed the broker-dealer
04:27:40 24 issue and the fact that you discussed that with Saul
04:27:44 25 Katz. Did you discuss, with respect to Madoff, did

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04:27:49 1 you discuss the independent auditor issue with Saul
04:27:53 2 Katz concerning Madoff at any time prior to the
04:27:55 3 fraud?

04:27:56 4 A. I don't recall knowing anything about
04:27:58 5 the independent auditor or having a discussion about
04:28:01 6 it. It is possible that Saul had a conversation
04:28:03 7 with me about that at some time but it is not part
04:28:07 8 of my knowledge.

04:28:08 9 Q. So you did not know prior to December
04:28:10 10 11th, 2008 if Friehling and Horowitz was the auditor
04:28:13 11 of Madoff? Did you know that?

04:28:16 12 A. I may have read it, I may have seen
04:28:18 13 it but it was not part of my knowledge, that I
04:28:20 14 recall.

04:28:20 15 Q. And you don't recall any discussions
04:28:22 16 with Saul Katz about Friehling and Horowitz being
04:28:26 17 Madoff's auditor?

04:28:27 18 A. I don't recall any conversation. As
04:28:29 19 I say, many years, it's possible that he may have
04:28:32 20 raised it at some point, but I don't recall a
04:28:34 21 conversation.

04:28:35 22 Q. Did you have any discussions with
04:28:37 23 Saul Katz concerning Madoff's back-office
04:28:40 24 operations?

04:28:41 25 A. I don't recall any conversations

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04:28:42 1 about Madoff's back-office operations, but I do
04:28:46 2 recall knowing, or at least believing that he had a
04:28:49 3 substantial infrastructure in his broker-dealer.

04:28:53 4 Q. Your understanding was that he had a
04:28:55 5 substantial --

04:28:55 6 A. That was my understanding.

04:28:57 7 Q. -- infrastructure?

04:29:01 8 A. Conventional understanding.

04:29:15 9 Q. Who is Mark Thompson? He's on this
04:29:18 10 email.

04:29:19 11 A. Yes. Mark Thompson was, I believe, a
04:29:23 12 director or managing director of the firm, an
04:29:27 13 analyst.

04:29:28 14 Q. Of Sterling Stamos?

04:29:30 15 A. Yes.

04:29:31 16 Q. Okay.

04:29:32 17

04:29:36 18

04:29:43 19

04:29:46 20

04:29:49 21

REDACTED

04:29:51 22

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04:29:55 1

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04:30:27 8

MR. BOHORQUEZ: Mark Exhibit 6.

04:30:29 9

(Exhibit PS-6 marked for

04:30:42 10

identification.)

04:30:48 11

Q. Mr. Stamos, I've handed you what's

04:30:50 12

been marked as Exhibit 6, which is an email chain

04:30:56 13

with Jia OuYang. I only have one question with

04:31:05 14

respect to this email, but feel free to take as long

04:31:08 15

as you like to review it.

04:31:34 16

A. Yes, I've read this.

04:31:39 17

Q. Jia OuYang, am I pronouncing that

04:31:43 18

right?

04:31:44 19

A. Jia.

04:31:44 20

Q. Jia. She is an associate of Sterling

04:31:47 21

Stamos?

04:31:48 22

A. She was an associate.

04:31:48 23

Q. Is she no longer there or is she in a

04:31:51 24

different position?

04:31:52 25

A. She's no longer at the firm.

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04:31:54 1 Q. When did she leave?

04:31:55 2 A. I don't recall. I believe it was in
04:31:57 3 2009 sometime.

04:31:59 4 Q. If you'd turn to the third page, this
04:32:03 5 is another one of those the email starts at the
04:32:05 6 bottom of the page and then continues to the top.
04:32:08 7 So if you look at the bottom of page 3 the email
04:32:11 8 from December 12th, 2008 at 1:22 p.m. written by Ms.
04:32:18 9 OuYang, it continues onto the top of the fourth
04:32:21 10 page. Do you see that?

04:32:22 11 A. Yes.

04:32:24 12 Q. The second paragraph, she writes:
04:32:30 13 "Apparently very, very ironically, a lot of
04:32:33 14 investors gave us crap about not generating returns
04:32:37 15 like Madoff's, and I guess our CIO always said it
04:32:42 16 was a scam, too good to be true. Well, there you
04:32:44 17 go, it was too good to be true."

04:32:47 18 First, what investors, just to use
04:32:52 19 her colloquialism, gave Sterling Stamos crap about
04:32:56 20 not generating returns like Madoff?

04:33:00 21 A. To be very specific, the person who
04:33:02 22 gave us the most crap about not generating returns
04:33:07 23 like Madoff was Saul Katz, to me personally and to
04:33:10 24 Mr. Ashok Chachra.

04:33:14 25 Q. Anyone else?

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04:33:15 1 A. I don't recall the specific names of
04:33:16 2 the investors, but I know that other investors who
04:33:18 3 had investments with Madoff often compared us to
04:33:22 4 Mr. Madoff. And that among those were a number of
04:33:25 5 the Sterling partners. The Sterling Equities
04:33:33 6 partners. Michael Katz, for example.

04:33:34 7 Q. Any other Sterling partner do you
04:33:37 8 recall comparing the returns?

04:33:41 9 A. I don't recall specific conversations
04:33:44 10 other than I do recall Mr. Katz giving us crap and I
04:33:47 11 do recall Michael Katz giving us crap.

04:33:51 12 Q. And is that a fair characterization?

04:33:53 13 A. Yes.

04:33:55 14 Q. The second half of that sentence
04:33:57 15 where she writes, "and I guess our CIO always said
04:34:01 16 it was a scam," who is she referring to, the CIO?
04:34:08 17 Is that Ashok?

04:34:09 18 A. I have to believe so because that was
04:34:11 19 the person she interacted with the most, but I don't
04:34:13 20 know for a fact who she was referring to.

04:34:15 21 Q. Well, was Ashok the CIO?

04:34:18 22 A. No.

04:34:19 23 Q. Does Sterling Stamos have a CIO?

04:34:24 24 A. Yes.

04:34:24 25 Q. And who is the CIO now?

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04:34:26 1 A. CIO today is Mr. Michael Chisek.

04:34:30 2 Q. And when did Mr. Chisek join Sterling
04:34:33 3 Stamos?

04:34:34 4 A. In 2009, I believe, third or fourth
04:34:39 5 month of 2009.

04:34:40 6 Q. And who was the CIO before
04:34:44 7 Mr. Chisek?

04:34:44 8 A. I was.

04:34:46 9 Q. Other than you, were there any other
04:34:48 10 CIOs before Mr. Chisek?

04:34:50 11 A. Yes. Noreen Harrington I believe in
04:34:54 12 2003 for several months.

04:35:00 13 Q. So, over the history of Sterling
04:35:04 14 Stamos from '02 to '08, the CIOs were Noreen
04:35:08 15 Harrington and then yourself?

04:35:11 16 A. Yes.

04:35:11 17 Q. Were there any others?

04:35:13 18 A. No.

04:35:18 19 Q. Did Noreen Harrington ever say that
04:35:23 20 Madoff was a scam and too good to be true?

04:35:28 21 A. I don't recall her ever using that,
04:35:33 22 that phrase, but she did express concerns to me
04:35:36 23 about Madoff.

04:35:36 24 Q. What concerns did --

04:35:38 25 A. Actually, I apologize, I don't know

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04:35:40 1 that she expressed concerns about Madoff. I
04:35:43 2 remember her expressing concerns about Merkin
04:35:45 3 possibly being an investor in Madoff.

04:35:47 4 Q. What did Ms. Harrington, what
04:35:50 5 concerns did Ms. Harrington express about Merkin
04:35:54 6 possibly being invested in Madoff?

04:35:56 7 A. That that was misrepresentative of
04:36:01 8 what he had said to me.

04:36:02 9 Q. When was that? When did she express
04:36:04 10 that concern?

04:36:07 11 A. Back in 2003.

04:36:09 12 Q. And what did she mean that that was
04:36:15 13 misrepresentative of what he had said to you?

04:36:18 14 A. In general terms?

04:36:18 15 Q. Um-hum.

04:36:20 16 A. I believe it was her belief that Ezra
04:36:23 17 Merkin was a feeder fund into Bernie Madoff.

04:36:29 18 Q. And what did you do in response to
04:36:30 19 Ms. Harrington's concerns about Merkin?

04:36:33 20 A. Immediately went to confirm or deny
04:36:36 21 that with Mr. Merkin.

04:36:39 22 Q. And what did Mr. Merkin say?

04:36:41 23 A. He denied that.

04:36:42 24 Q. And this is still in the 2003 time
04:36:45 25 frame?

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04:36:45 1

A. Yes.

04:36:47 2

Q. Did Ms. Harrington raise any concerns

04:36:50 3

with respect to Madoff at any time?

04:36:53 4

A. I don't recall her raising concerns

04:36:55 5

with regard to Madoff.

04:36:58 6

Q. So, Mr. Stamos, did you at any time

04:37:02 7

tell any of the Sterling Stamos employees that

04:37:05 8

Madoff was a scam or, quote, too good to be true?

04:37:09 9

A. I can't recall ever using those words

04:37:11 10

to describe Mr. Madoff or, for that matter, any

04:37:15 11

manager that I can think of.

04:37:18 12

Q. Did you ever use any words similar in

04:37:20 13

sum and substance to "scam" or "too good to be true"

04:37:24 14

in characterizing Madoff?

04:37:25 15

A. I don't recall ever using those kinds

04:37:28 16

of words to describe Mr. Madoff.

04:37:39 17

Q. When Mr. --

04:37:40 18

A. This is all prior to December 12th,

04:37:43 19

2000 --

04:37:44 20

Q. Yes.

04:37:45 21

A. Yes, in all that time frame.

04:37:47 22

Q. Thank you for doing that. That

04:37:49 23

clears things up.

04:37:55 24

Why did Ms. Harrington believe that

04:37:58 25

Merkin may have been a feeder for Madoff?

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04:38:01 1 A. I don't know why.

04:38:03 2 Q. In her discussions with you about her
04:38:05 3 concerns with Merkin possibly being a feeder for
04:38:08 4 Madoff, what evidence did she rely on, what did she
04:38:14 5 point to?

04:38:15 6 A. The only thing I can recall is her
04:38:17 7 referring to rumors to that effect.

04:38:19 8 Q. And what did the rumors say?

04:38:21 9 A. The rumors were, according to her,
04:38:24 10 that Mr. Merkin is, Ascot Fund is a feeder fund into
04:38:32 11 Bernard Madoff's fund.

04:38:33 12 Q. Were there rumors at that time in
04:38:36 13 2003 with respect to Gabriel?

04:38:38 14 A. Not that I'm aware of.

04:38:40 15 Q. And were there rumors at that time
04:38:43 16 with respect to Ariel?

04:38:45 17 A. I believe that Ariel is the offshore
04:38:47 18 version of Gabriel, and I don't believe there were
04:38:50 19 any rumors at that time.

04:38:55 20 Q. When did -- Ms. Harrington is no
04:38:58 21 longer at Sterling Stamos, right?

04:39:01 22 A. That's correct.

04:39:01 23 Q. When did she leave?

04:39:03 24 A. At that time, in that time frame.
04:39:04 25 She was there for I think three to six months.

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04:39:06 1 Q. And why did she leave?

04:39:08 2 A. We had a disagreement about final
04:39:09 3 authority on investment decision-making.

04:39:12 4 Q. You won that disagreement, obviously?

04:39:14 5 A. Yes.

04:39:15 6 Q. What about Ms. OuYang, why did she
04:39:19 7 leave Sterling Stamos?

04:39:22 8 A. I don't know why she left.

04:39:23 9 Q. Was she fired?

04:39:24 10 A. No. She was a good performer.

04:40:02 11 MR. BOHORQUEZ: Why don't we go off
04:40:06 12 the record because we have less than five minutes on
04:40:08 13 the tape.

04:40:09 14 THE VIDEOGRAPHER: Going off the
04:40:10 15 record, the time is 4:40. This ends tape number 4.

04:40:46 16 (Recess taken.)

17 (Exhibits PS-7 and PS-8 marked for
18 identification.)

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1 (The following was reported by
2 Monique Vouthouris, CCR)

05:19:51 3 (Exhibits PS-9 through PS-13 marked
05:24:02 4 for identification.)

05:24:02 5 THE VIDEOGRAPHER: We are back on the
05:24:18 6 record. The time is 5:24. This is tape number 5.

05:24:24 7 BY MR. BOHORQUEZ:

05:24:25 8 Q. Okay. Welcome back, Mr. Stamos.

05:24:30 9 A. Thank you.

05:24:32 10 Q. Before we broke we were looking at
05:24:37 11 Exhibit 6, if you have it. You can put it in front
05:24:41 12 of you.

05:24:41 13 A. Yes.

05:24:41 14 Q. I believe we were looking at page 4
05:24:43 15 of Exhibit 6.

05:24:48 16 A. Yes.

05:24:49 17 Q. Right. And specifically we had honed
05:24:52 18 in on the statement that Ms. OuYang had written,
05:24:55 19 "And I guess our CIO always said it was a scam, too
05:25:00 20 good to be true." Right? That's what we were
05:25:03 21 discussing before.

05:25:04 22 A. Yes.

05:25:05 23 Q. Despite the fact that Ashok Chachra
05:25:12 24 may not have been the CIO at any time, did Ashok
05:25:17 25 Chachra ever say that Madoff was a scam or too good

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05:25:20 1 to be true?

05:25:21 2 A. I don't know that he ever -- whether
05:25:24 3 he ever said that.

05:25:26 4 Q. Do you know if anyone at Sterling
05:25:31 5 Stamos ever said that Madoff was a scam, that it was
05:25:35 6 too good to be true?

05:25:36 7 A. Can you be specific as to the time
05:25:38 8 frame?

05:25:39 9 Q. Prior to December 11, 2008.

05:25:42 10 A. Because, to be clear, after that I
05:25:44 11 think a lot of people said that.

05:25:45 12 Q. Yeah.

05:25:46 13 A. But prior to that I don't recall
05:25:48 14 anybody ever saying, to my recollection, that it was
05:25:51 15 a scam, quote, too good to be true.

05:25:54 16 Q. Okay. Earlier you had testified that
05:26:05 17 Miss Doreen Harrington had raised concerns that
05:26:11 18 Merkin may be a feeder fund for Madoff. Is that
05:26:14 19 right?

05:26:14 20 A. Yes.

05:26:16 21 Q. Okay. Why was that of concern to you
05:26:18 22 or Ms. Harrington?

05:26:20 23 A. That would be of concern to
05:26:22 24 Ms. Harrington and to me if it were true, because it
05:26:24 25 would go to the truthfulness of the manager with

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05:26:27 1 whom we were investing, which was Mr. Merkin.

05:26:30 2 Q. Because prior to that he had
05:26:32 3 represented to you that his funds were not invested
05:26:34 4 in Madoff?

05:26:35 5 A. Both prior to that, after that, and
05:26:37 6 on an ongoing basis.

05:26:41 7 Q. Okay. Was there any other reason as
05:26:42 8 to why the fact that Merkin may be invested in
05:26:46 9 Madoff why that would have been of concern to you at
05:26:51 10 that time?

05:26:51 11 A. At that time, no, not that I can
05:26:53 12 recall.

05:26:53 13 Q. All right.

05:26:56 14 A. Well, yes. It would mean that we
05:26:59 15 would have been paying fees on a manager that might
05:27:02 16 -- clients were already invested in.

05:27:04 17 Q. Okay. Thank you. Let's go to tab
05:27:11 18 24. I think we're at Exhibit 7, we've already
05:27:32 19 marked.

05:27:32 20 A. Thank you.

05:27:33 21 Q. I'm now handing you what's been
05:27:35 22 marked as Exhibit 7. Now, Mr. Stamos, that is an
05:27:43 23 e-mail from Tim Dick to you of December 14th, 2008?

05:27:47 24 A. Yes.

05:27:47 25 Q. It has a fairly lengthy attachment to

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05:27:50 1 the e-mail.

05:27:51 2 A. Yes.

05:27:51 3 Q. But I'm not going to ask you any
05:27:53 4 questions about the attachment.

05:27:54 5 A. Okay.

05:27:55 6 Q. If you want to review the attachment,
05:27:56 7 you have every right to, but I'll tell you I'm only
05:28:00 8 going to ask you questions about the e-mail.

05:28:03 9 A. Um-hmm. Okay. So I don't need to
05:28:31 10 review this. I -- I recall seeing this document
05:28:34 11 before, but I don't need to review this now.

05:28:36 12 Q. I'm not going to ask you any
05:28:38 13 questions about it.

05:28:39 14 A. Okay. I've read the e-mail.

05:28:40 15 Q. Okay. Who is Tim Dick?

05:28:42 16 A. Tim Dick is a long-time personal
05:28:45 17 friend of mine.

05:28:46 18 Q. And is he an investor with Sterling
05:28:50 19 Stamos?

05:28:51 20 A. I don't believe he's ever invested
05:28:52 21 with us.

05:28:54 22 Q. Okay. In what -- what company is
05:29:00 23 Mr. Dick affiliated with?

05:29:01 24 A. Today?

05:29:02 25 Q. Yes.

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05:29:03 1 A. I'm not aware of -- I don't know the
05:29:04 2 name of the company he works with. I believe he's a
05:29:06 3 venture capitalist.

05:29:08 4 Q. Okay. Does he work for Startup
05:29:13 5 Capital Ventures, does that ring a bell?

05:29:15 6 A. It -- it -- I -- it could be Startup
05:29:20 7 Capital Ventures, it sounds like the kind of work he
05:29:22 8 does.

05:29:22 9 Q. And is he based off the west coast or
05:29:25 10 east coast?

05:29:26 11 A. I believe he's on the west coast, but
05:29:29 12 I don't know that for a fact because I haven't
05:29:31 13 spoken to him in sometime.

05:29:33 14 Q. Do you see his e-mail is
05:29:42 15 tim@usehalf.com?

05:29:42 16 A. Yes.

05:29:42 17 Q. Do you know what UseHalf is?

05:29:44 18 A. I'm vaguely familiar with
05:29:47 19 Usehalf.com.

05:29:47 20 Q. What is it?

05:29:47 21 A. I believe it was an environmental
05:29:49 22 group that was trying to reduce use of oil and other
05:29:53 23 carbon-producing energy sources.

05:29:58 24 Q. What was Mr. Dick's relationship with
05:30:01 25 UseHalf at this time? Do you know?

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05:30:02 1 A. I don't know. He may have been the
05:30:04 2 founder of it, may be a participant in it.

05:30:06 3 Q. Okay. The first paragraph Mr. Dick
05:30:12 4 writes that: "We've seen the good news
05:30:16 5 (corrections) and your press release."

05:30:19 6 Is he referencing the December 12th
05:30:23 7 press release that you issued in response to the
05:30:25 8 Madoff fraud?

05:30:26 9 A. I believe so.

05:30:27 10 MR. GOUDISS: I object. Go ahead.

05:30:29 11 A. I believe so. I don't know for a
05:30:30 12 fact, but --

05:30:32 13 Q. Okay. Do you recall receiving this
05:30:33 14 e-mail from Mr. Dick?

05:30:35 15 A. I recall the e-mail. I received a
05:30:40 16 lot of e-mails in that time frame, so I don't know
05:30:42 17 when I specifically recall it, but I definitely
05:30:45 18 recall it now.

05:30:46 19 Q. Do you see the second paragraph where
05:30:51 20 Mr. Dick writes in the third sentence: "I remember
05:30:53 21 the discussions we had about Bernie in the early
05:30:56 22 days of SP Capital. Thank goodness you diversified
05:31:02 23 Saul - it is too bad Fred didn't buy in to the same
05:31:05 24 degree."

05:31:06 25 What discussions is Mr. Dick

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05:31:10 1 referring to in that paragraph?

05:31:11 2 A. I believe he's referring to the very
05:31:13 3 specific discussions we had -- I had with -- with
05:31:17 4 Saul at the formation of the firm which Tim was
05:31:21 5 aware of recommending that Saul create a diversified
05:31:26 6 portfolio and not have more than 10 percent of his
05:31:29 7 assets in any one manager, including Mr. Madoff.

05:31:34 8 Q. And you shared those discussions that
05:31:35 9 you had with Saul Katz with Mr. Dick?

05:31:38 10 A. I believe that -- that Tim was aware
05:31:40 11 of it because Tim was serving as advisor/consultant
05:31:45 12 to some combination of SP Capital and Mr. Katz at
05:31:51 13 the time.

05:31:51 14 Q. Other than the diversification of the
05:32:00 15 portfolio issue that you recall being part of those
05:32:04 16 early discussions with Mr. Katz, was there anything
05:32:07 17 else that was discussed that you believe Mr. Dick is
05:32:10 18 referring to here?

05:32:11 19 A. Are you asking by me or by Mr. Dick?

05:32:14 20 Q. First by you.

05:32:15 21 A. By me the only conversations I
05:32:17 22 remember having at that time with Mr. Katz were
05:32:20 23 about diversification and the single manager risk.

05:32:24 24 Q. Okay. And what about with respect to
05:32:26 25 Mr. Dick?

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05:32:26 1 A. I'm not aware of the specific
05:32:28 2 discussions that Mr. Dick had other than his
05:32:31 3 reference here. I was not -- I don't believe I
05:32:34 4 was -- I don't recall being present in those
05:32:36 5 discussions.

05:32:37 6 Q. Okay. Excuse me. You see in the
05:32:44 7 third paragraph Mr. Dick writes: "In my
05:32:48 8 introductory discussion with Saul he brought up
05:32:51 9 Bernie and I told him I couldn't make Bernie's math
05:32:54 10 work, something wasn't right (see below.)" Do you
05:32:58 11 see that?

05:32:58 12 A. Yes.

05:32:58 13 Q. Do you know what introductory
05:33:01 14 discussion he's referencing?

05:33:03 15 A. Yes.

05:33:04 16 Q. What discussion is that?

05:33:06 17 A. I believe that I introduced Tim Dick
05:33:10 18 to Mr. Katz to serve as an advisor to him on
05:33:13 19 Changing World Technologies, which was one of the
05:33:16 20 investments that Mr. Katz invited me to participate
05:33:19 21 in.

05:33:20 22 Q. Okay. And did Mr. -- prior to this
05:33:28 23 e-mail -- actually, let me rephrase.

05:33:34 24 Contemporaneous with the
05:33:36 25 introduction, introductory discussion that Mr. Dick

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05:33:40 1 had with Saul Katz, did Mr. Dick share with you the
05:33:46 2 fact that he had brought up Bernie and told Saul
05:33:50 3 Katz that Bernie's math didn't work?

05:33:52 4 A. I don't recall having that
05:33:54 5 conversation with Mr. Dick.

05:33:57 6 Q. You don't recall Mr. Dick ever
05:33:59 7 telling you that he, separate and apart from that
05:34:04 8 discussion -- let me rephrase that.

05:34:06 9 Did Mr. Dick ever tell you that he
05:34:08 10 couldn't make Bernie's math work?

05:34:11 11 A. I don't recall him saying that to me
05:34:14 12 prior to reading this in this e-mail.

05:34:17 13 Q. Okay. And do you recall him ever
05:34:24 14 telling you that he had spoken to Mr. Saul Katz
05:34:28 15 about the fact that Mr. Dick couldn't make Bernie's
05:34:32 16 math work?

05:34:32 17 A. I don't recall that part of the
05:34:37 18 conversation.

05:34:37 19 Q. What part of the conversation do you
05:34:39 20 recall?

05:34:39 21 A. I do recall Tim's specific
05:34:41 22 recommendations about Changing World Technologies,
05:34:44 23 because that was the piece that I had asked him to
05:34:46 24 look at.

05:34:47 25 Q. But you don't recall any aspects of

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05:34:49 1 the discussion concerning Madoff that Mr. Dick had
05:34:52 2 with Saul Katz?

05:34:53 3 A. I don't recall that conversation, if
05:34:54 4 it existed, if it ever occurred.

05:34:56 5 Q. Okay. Did anyone at Sterling Stamos
05:35:02 6 ever try to reverse engineer Madoff's split-strike
05:35:07 7 strategy?

05:35:08 8 A. I believe that at some point later on
05:35:12 9 in the development of our firm that we tried to --
05:35:17 10 that -- that our head of risk may have tried to do
05:35:20 11 that, but I'm not certain that he actually did that
05:35:22 12 analysis.

05:35:22 13 Q. And who was the head of risk that
05:35:24 14 you're referring to?

05:35:25 15 A. Rohit Kumar.

05:35:28 16 Q. And how -- how would you be able to
05:35:34 17 confirm whether or not Mr. Kumar tried to reverse
05:35:37 18 engineer Madoff's strategy?

05:35:41 19 A. There would be a memo or an analysis
05:35:44 20 somewhere in one of his files if that did occur.

05:35:47 21 Q. Did you ever personally try to
05:35:51 22 reverse engineer Stamos -- I'm sorry, Madoff's
05:35:56 23 strategy?

05:35:56 24 A. I don't understand what reverse
05:35:58 25 engineer means. Could you be more specific -- I

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05:36:00 1 have been --

05:36:01 2 Q. Well, you have been answering the
05:36:03 3 questions before, so --

05:36:04 4 A. Ask me the question in terms of
05:36:05 5 somebody else trying to do it, but you have to
05:36:07 6 explain to me what it is. Because if somebody says
05:36:10 7 "reverse engineer" I don't know what that
05:36:12 8 specifically means.

05:36:13 9 Q. What do you understand the term
05:36:14 10 "reverse engineer" to be?

05:36:16 11 A. I understand it to mean -- to see if
05:36:18 12 the calculation equates to the number that was
05:36:22 13 generated in that month.

05:36:24 14 Q. Okay. Using that definition, did you
05:36:27 15 ever reverse engineer Madoff's returns --

05:36:31 16 A. I believe I testified to that this
05:36:33 17 morning, that in -- prior to joining the firm when I
05:36:37 18 would like at my own investment returns,
05:36:38 19 occasionally on a month-to-month basis I would look
05:36:41 20 at my returns, see when the investment returns
05:36:44 21 occurred and see if it footed with my expectations
05:36:51 22 of the market.

05:36:52 23 Q. Okay. Other than Mr. Kumar, was it?

05:36:55 24 A. Kumar, K-u-m-a-r.

05:36:58 25 Q. Kumar, is there anyone else at

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05:37:03 1 Sterling Stamos that may have performed some sort of
05:37:06 2 reverse engineering of Madoff's strategy that you're
05:37:08 3 aware of?

05:37:09 4 MR. GOUDISS: I object. Go ahead.

05:37:10 5 A. It requires speculation. I don't
05:37:12 6 know.

05:37:12 7 Q. Do you know if Ashok Chachra ever
05:37:16 8 reverse engineered Madoff's strategy?

05:37:17 9 A. I don't know.

05:37:19 10 Q. Did Saul Katz ever express to you
05:37:31 11 that others raised with him that they tried to do
05:37:37 12 the math with Bernie's strategy and it didn't add
05:37:39 13 up?

05:37:39 14 A. I don't recall Mr. Katz ever saying
05:37:41 15 that to me.

05:37:47 16 Q. We can go back to the second
05:37:56 17 paragraph where Mr. Dick writes, "Thank goodness you
05:38:02 18 diversified Saul - it's too bad Fred didn't buy in
05:38:07 19 to the same degree."

05:38:10 20 Is it your understanding that Fred
05:38:12 21 Wilpon did not diversify his investments for Madoff
05:38:18 22 as much as Saul Katz did?

05:38:21 23 A. It is my understanding that when we
05:38:24 24 formed the firm that Mr. Katz was a firm believer in
05:38:29 25 moving toward diversification and that it took

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05:38:31 1 Mr. Wilpon several months, if not more than a year
05:38:36 2 or two, to agree with that approach and strategy.

05:38:41 3 Q. And why did it take so long for
05:38:44 4 Mr. Wilpon to agree with that approach and strategy?

05:38:46 5 MR. GOUDISS: I object. Go ahead.

05:38:47 6 A. I don't know why -- what his thoughts
05:38:51 7 were. I can -- what he said to me --

05:38:55 8 Q. Well, let's talk about the
05:38:56 9 discussions you had with Fred Wilpon about
05:38:59 10 diversifying from Madoff.

05:39:01 11 A. What I recall Mr. Wilpon saying to me
05:39:04 12 was we will call the firm something other than
05:39:07 13 Sterling and see how you do for a year, and after a
05:39:09 14 year we'll then make that decision.

05:39:12 15 Q. That's why it was called SP Capital
05:39:14 16 at first?

05:39:15 17 A. Stamos Partners Capital, yeah, Stamos
05:39:18 18 Partners Management, yes, SP Capital.

05:39:21 19 Q. And when was the name changed to
05:39:23 20 Sterling Stamos?

05:39:24 21 A. About a year later.

05:39:26 22 Q. And did you have discussions with
05:39:28 23 Fred Wilpon about changing the name to Sterling
05:39:31 24 Stamos?

05:39:31 25 A. Yes.

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05:39:31 1 Q. Okay. What was the subject -- what
05:39:34 2 was the nature of those discussions?

05:39:36 3 A. The nature of the discussions was at
05:39:37 4 the time when he now felt comfortable that we had
05:39:39 5 set up an investment firm that performed well, he
05:39:43 6 was now prepared to put their brand together with
05:39:46 7 our brand.

05:39:55 8 (Comments off the record.)

05:40:11 9 Q. Now, I think we've marked Exhibit 8.
05:40:25 10 Okay. Mr. Stamos, I've handed you what's been
05:40:28 11 marked as Exhibit 8, which is a Sterling Stamos
05:40:32 12 Talking -- Investor Talking Points, dated December
05:40:35 13 16th, 2008. Please feel free to review as much
05:40:41 14 as -- of the document as you like, but I'm only
05:40:44 15 going to ask you a question about one page of it,
05:40:46 16 which is page 10, the one ending in Bates 807. The
05:40:54 17 Bates is the number at the bottom right-hand of the
05:40:57 18 page.

05:40:57 19 A. So the one that ends page 10, let's
05:41:03 20 see -- oh, the one that says 28007?

05:41:09 21 Q. Yes.

05:41:10 22 A. "Practical outcome operational and
05:41:12 23 risk due diligence."

05:41:14 24 Q. You got it.

05:41:14 25 A. Okay. So that's the page.

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05:41:16 1 Q. Yes. But feel free to review as much
05:41:18 2 of the document as you like.

05:44:31 3 A. Okay. I've -- I've skimmed part of
05:44:32 4 it, read this page. I'm somewhat comfortable.

05:44:39 5 Q. Okay. One general question with
05:44:41 6 respect to Exhibit 8. Who drafted this document?
05:44:45 7 Do you know?

05:44:45 8 A. I believe it was a team of people
05:44:49 9 that drafted this document.

05:44:51 10 Q. And when you refer to a team of
05:44:53 11 people, who was part of that team?

05:44:57 12 A. Some of them are referenced in
05:44:59 13 parentheses on page 10, so I believe that, for
05:45:06 14 example, in the second bullet "DD" refers to Derek
05:45:10 15 Daley, who was at the time head of communications.

05:45:13 16 Q. Right.

05:45:14 17 A. And in parentheses Saleemah, I don't
05:45:17 18 remember Saleemah's last name, but she was the head
05:45:20 19 of our operational due diligence team at that time.
05:45:22 20 And generally speaking, talking points were drafted
05:45:26 21 with Kevin Okimoto's participation as well, who was
05:45:30 22 the head of investor partner relations.

05:45:34 23 Q. Was Rohit Kumar part of the team that
05:45:38 24 drafted this?

05:45:38 25 A. I don't know whether he participated

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05:45:39 1 in the drafting of this or not, but he was the head
05:45:42 2 of risk.

05:45:43 3 Q. The first page of Exhibit 8 says
05:45:48 4 "Investor talking points 12/16/2008, confidential
05:45:53 5 presentation." Is that referencing to -- is that a
05:45:57 6 reference to a presentation that was given to
05:45:59 7 investors post-Madoff --

05:46:02 8 A. I believe this is referring to what
05:46:04 9 would have been a conference call with our investors
05:46:06 10 where we would have invited them to call in to a
05:46:10 11 conference call.

05:46:11 12 Q. So did that conference call occur?

05:46:14 13 A. I believe it did.

05:46:15 14 Q. Okay. And do you know if these
05:46:16 15 talking points were used at that conference call?

05:46:19 16 A. I can't recall specifically these
05:46:21 17 talking points, that's why I was reading them
05:46:23 18 carefully to see if they could refresh my
05:46:25 19 recollection. So the part that I do recall is the
05:46:28 20 part that I usually cover, which is the economy and
05:46:32 21 markets, which would be the first part of this.

05:46:36 22 Q. Okay. You say the first few pages --

05:46:37 23 A. The first few pages talking about the
05:46:39 24 economy and market, that part I recall because those
05:46:41 25 are consistent with the kinds of talking points that

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05:46:43 1 I had generally had at that time.

05:46:47 2 Q. Okay. Why don't we turn to page 10,
05:46:49 3 or the page ending with 807, the Bates number.

05:46:54 4 A. Yes.

05:46:54 5 Q. The first bullet: "Sterling Stamos
05:47:01 6 has no money invested in any funds of Bernie
05:47:06 7 Madoff." Do you see that?

05:47:06 8 A. Yes.

05:47:06 9 Q. Okay. The second bullet in the
05:47:08 10 talking points is written: "We declined to invest
05:47:11 11 with Madoff a few years ago. From a DD perspective
05:47:16 12 we weren't comfortable." Do you know who wrote
05:47:18 13 that?

05:47:18 14 A. I don't know. And I apologize for my
05:47:20 15 prior reference, the "DD" might not be referring to
05:47:24 16 Derek Daley. It could be referring to DD, due
05:47:27 17 diligence, so he may not have been a part of this.

05:47:30 18 Q. Okay. Why do the talking points
05:47:32 19 state that "Sterling Stamos declined to invest with
05:47:36 20 Madoff a few years ago. From a DD perspective we
05:47:39 21 weren't comfortable," what does that mean?

05:47:41 22 A. I believe it means what we discussed
05:47:43 23 earlier, which is that our operational due diligence
05:47:48 24 discipline kept us out of investments like Madoff.

05:47:53 25 Q. But that's not what this says.

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05:47:55 1 A. Correct.

05:47:56 2 Q. Okay. So I'm trying to reconcile the
05:47:59 3 two. So what does it mean when -- when it was
05:48:03 4 written that "Sterling Stamos declined to invest
05:48:05 5 with Madoff a few years ago," what is that
05:48:08 6 referencing?

05:48:08 7 A. So I think the DD perspective is the
05:48:12 8 equivalent of our due diligence discipline, that
05:48:15 9 when we were -- when it was proposed to us to invest
05:48:20 10 in Madoff, which increasingly became a pressure. I
05:48:25 11 don't refer -- I don't know why it says a few years
05:48:27 12 ago as opposed to what I do recall, which was that
05:48:30 13 it was in the period 2008, which would have been
05:48:32 14 that current year, that we would have declined to do
05:48:36 15 so because of our due diligence perspective, which
05:48:39 16 is the equivalent of our due diligence discipline.

05:48:42 17 Q. And when you're referring to 2008,
05:48:44 18 you're referring to the 2008 board meeting where the
05:48:50 19 black box -- black box aspects of Madoff were
05:48:53 20 discussed?

05:48:53 21 A. Among other things, yes.

05:48:55 22 Q. Okay. And at that board meeting what
05:48:59 23 other issues concerning Madoff were discussed that
05:49:02 24 prevented you or instructed you not to invest with
05:49:07 25 Madoff?

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05:49:07 1 A. I don't recall any other points other
05:49:09 2 than those.

05:49:09 3 Q. Okay. So when it says "from a DD
05:49:13 4 perspective we weren't comfortable," that is a
05:49:16 5 reference to the black box aspect of the Madoff
05:49:19 6 strategy?

05:49:19 7 A. I don't know -- I don't know what the
05:49:21 8 author of this was referring to, but that's my
05:49:23 9 assumption.

05:49:24 10 Q. Okay. Now, this page here where it
05:49:44 11 lists the two specialized teams, the second bullet,
05:49:49 12 and then goes on to discuss operational due
05:49:52 13 diligence, and the risk due diligence, the
05:49:55 14 components of your due diligence procedures.

05:49:57 15 A. Um-hmm.

05:49:59 16 Q. Okay. Is it your understanding that
05:50:04 17 Madoff would not have passed these -- this due
05:50:09 18 diligence -- these due diligence procedures if they
05:50:11 19 would have been conducted?

05:50:12 20 MR. GOUDISS: Based on what he knows
05:50:13 21 now or at some other point?

05:50:15 22 Q. Well, based on what you know now.

05:50:17 23 A. Based on what I know now, I feel
05:50:20 24 confident that he would not have passed our due
05:50:23 25 diligence discipline, our due diligence process, and

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05:50:25 1 if we actually did due diligence, that on a number
05:50:27 2 of those points, his fund would have come up short.

05:50:31 3 Q. Okay. Now, prior to 2000 -- December
05:50:34 4 11, 2008, we already discussed the black box aspect
05:50:39 5 and the fact that you concluded that Madoff would
05:50:43 6 not have passed that one aspect.

05:50:45 7 Were there any other aspects of the
05:50:48 8 due diligence procedures that are set forth on this
05:50:53 9 page that you discussed with any members of your
05:50:55 10 team to conclude that Madoff would not have passed
05:51:00 11 any of those -- any of these points? And you can go
05:51:04 12 through them one by one, but it might be quicker for
05:51:04 13 you to just --

05:51:09 14 A. Let me just read it and see --

05:51:11 15 Q. -- and see if there are any that you
05:51:13 16 discussed with your team with respect to Madoff
05:51:14 17 before December 11, 2008.

05:51:16 18 A. All right. So if I could, I'll just
05:51:17 19 go through it by line.

05:51:17 20 Q. Sure.

05:51:19 21 A. On the first line: "Investment teams
05:51:21 22 do not do first check on style, strategy and
05:51:22 23 process." The style of a black box would have
05:51:25 24 failed investment due diligence.

05:51:26 25 Q. And so that was done --

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05:51:28 1 A. On the surface, just on the surface
05:51:30 2 of knowing that it was a black box, my assumption is
05:51:34 3 if we did due diligence, that would have checked the
05:51:38 4 box and said we don't do this.

05:51:39 5 Q. And what I just want to be clear is I
05:51:41 6 know that due diligence has a certain connotation to
05:51:44 7 it. I'm not talking about whether it was done in
05:51:46 8 the due diligence perspective, but whether this type
05:51:49 9 of action was taken or conducted with respect to
05:51:53 10 Madoff, that's all.

05:51:55 11 A. We did not conduct this kind of
05:51:57 12 analysis on Mr. Madoff or his investments.

05:52:01 13 Q. And what are you referring to when
05:52:05 14 you say that?

05:52:05 15 A. This -- this analysis was not
05:52:07 16 conducted --

05:52:08 17 Q. The style, strategy and process, the
05:52:10 18 first bullet?

05:52:10 19 A. I don't believe we conducted any of
05:52:12 20 this analysis on Mr. Madoff. I don't believe we
05:52:14 21 ever did due diligence on Mr. Madoff. But I'm
05:52:18 22 reading for --

05:52:21 23 Q. Right.

05:52:22 24 A. So -- so, for example, I know that --
05:52:33 25 I knew then or at least I heard on the surface then

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05:52:36 1 that Mr. Madoff had his own broker-dealer and
05:52:39 2 cleared his own trades, and that would have failed
05:52:41 3 the fourth bullet point under the third bullet
05:52:44 4 point. So bullet point 3, number 4, "Firm must use
05:52:48 5 external," dot dot dot, up to the part where it
05:52:51 6 says, "must use an external broker-dealer," he would
05:52:54 7 not have -- he would not have --

05:52:55 8 Q. Right. And you knew that before
05:52:57 9 December 11th, 2008?

05:52:59 10 A. Yes. That's one of the issues we had
05:53:01 11 talked about.

05:53:01 12 Q. Right. Were there any others?

05:53:04 13 A. I may be missing something, but I
05:53:25 14 don't see any other issues that -- that on the basis
05:53:26 15 of what we knew on the surface would have come to
05:53:30 16 that --

05:53:30 17 Q. Okay.

05:53:31 18 A. -- other than the broker-dealer piece
05:53:34 19 and the first point I mentioned about the black --
05:53:36 20 black box --

05:53:37 21 Q. Black box.

05:53:38 22 A. -- style. Prior to December 12th --
05:53:44 23 or December 11th.

05:53:46 24 Q. 2008.

05:53:46 25 A. 2008.

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05:53:47 1 Q. Bullet 3, number 4, one of the issues
05:53:51 2 that you highlighted, the broker-dealer issue, it
05:53:54 3 goes on to say: "So check on AUM existing no fraud
05:53:58 4 and its valuation, too." Do you see that?

05:54:01 5 A. Um-hmm.

05:54:02 6 Q. Okay. Did you ever suggest or tell
05:54:06 7 Saul Katz that because of this broker-dealer issue
05:54:10 8 with Madoff, that Sterling should assess the
05:54:15 9 existing AUM?

05:54:16 10 A. I don't recall ever having that
05:54:18 11 conversation with Mr. Katz.

05:54:19 12 Q. Okay. Let's go now to -- I think
05:54:31 13 we're done with that document for now. Thank you.
05:54:50 14 I think this has been marked as 9.

05:54:50 15 (Comments off the record.)

05:55:10 16 Q. All right. Mr. Stamos, I'm handing
05:55:13 17 you what's been marked as Exhibit 9, which is an
05:55:15 18 e-mail exchange between you and Ezra Merkin from
05:55:24 19 November 14th, 2004 to November 15th, 2004. Please
05:55:29 20 review it and let me know when you're ready to
05:55:36 21 discuss.

05:55:40 22 A. May I ask a question, are we going to
05:55:42 23 review the Schulte Roth?

05:55:44 24 Q. No, we're not.

05:55:46 25 A. Okay.

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05:56:20 1 Okay. I've reviewed the e-mail.

05:56:22 2 Q. Okay. Let's look at first page of

05:56:29 3 Exhibit 9. Do you see at the bottom of the page

05:56:34 4 it's an e-mail from Mr. Merkin to you, November 14th

05:56:39 5 at 9:48 p.m. Do you see that?

05:56:42 6 A. Yes.

05:56:42 7 Q. Okay. The second sentence Mr. Merkin

05:56:48 8 makes a reference to "our friend in the Lipstick

05:56:51 9 building."

05:56:52 10 A. Yes.

05:56:52 11 Q. Who is he referring to?

05:56:53 12 A. I believe he's referring to Bernard

05:56:56 13 Madoff.

05:56:56 14 Q. And why does Mr. Merkin use the

05:57:00 15 phrase "our friend in the Lipstick building"?

05:57:03 16 A. I don't know why he refers to him as

05:57:05 17 "our friend in the Lipstick building."

05:57:07 18 Q. Okay. Have you ever used that

05:57:09 19 before?

05:57:10 20 A. I believe I referred to it in the

05:57:13 21 e-mail afterward --

05:57:13 22 Q. Right.

05:57:14 23 A. -- but I don't recall having that

05:57:16 24 conversation -- using that phrase before. I do

05:57:19 25 recall the Lipstick building reference.

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05:57:22 1 Q. I'm sorry, what --

05:57:23 2 A. I do recall the Lipstick building
05:57:27 3 reference.

05:57:27 4 Q. Okay. So did Mr. Merkin refer to
05:57:31 5 Mr. Madoff as "our friend in the Lipstick building"
05:57:33 6 on other occasions?

05:57:34 7 A. He may have. I don't recall that
05:57:37 8 phrase in any specific conversation prior to this
05:57:41 9 e-mail.

05:57:41 10 Q. Okay. And then you already
05:57:44 11 referenced it in -- in your response to him at the
05:57:46 12 top of Exhibit 9, you parroted back with you used
05:57:52 13 the phrase as well, "our friend in the Lipstick
05:57:55 14 building."

05:57:55 15 A. Yes.

05:57:55 16 Q. Did you use the phrase in response to
05:57:58 17 Mr. Merkin, is that why you used "our friend in the
05:58:01 18 Lipstick building" rather than just saying Madoff?

05:58:03 19 A. I believe so. I believe my reference
05:58:05 20 was familiar back to the e-mail that he -- he
05:58:09 21 referenced -- that you referenced before.

05:58:11 22 Q. Okay. Do you have any reason to
05:58:21 23 believe why Mr. Merkin wouldn't just say Madoff?

05:58:27 24 MR. GOUDISS: I object. Go ahead.

05:58:29 25 A. I have no reason to -- there is no

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05:58:33 1 reason I can think of.

05:58:34 2 Q. Okay. He wasn't trying to hide
05:58:36 3 Madoff in some way for some reason?

05:58:37 4 A. Not that I can possibly imagine,
05:58:39 5 because it was clear what he was -- to whom he was
05:58:42 6 referring.

05:58:42 7 Q. Okay. The third sentence Mr. Merkin
05:58:51 8 makes a reference to that he has a long list even by
05:58:55 9 our customary standards that you are going to
05:58:58 10 discuss at a call later that week, or at a meeting
05:59:03 11 later that week. Did that meeting occur?

05:59:10 12 A. I don't recall. I assume that it
05:59:13 13 did, but I don't recall.

05:59:14 14 Q. Okay. Do you recall what was on the
05:59:17 15 long list of items that Mr. Merkin references in
05:59:21 16 that e-mail?

05:59:21 17 A. I don't recall.

05:59:22 18 Q. What type of topics did you generally
05:59:28 19 discuss with Mr. Merkin?

05:59:30 20 A. Generally?

05:59:30 21 Q. Yes. At this time in 2004.

05:59:33 22 A. Generally we discussed investments in
05:59:37 23 his funds, how they were doing and what the
05:59:39 24 prospects were for them going forward, as well as
05:59:43 25 potential investments with other fund managers.

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05:59:45 1 Q. Did you have -- did Sterling Stamos
05:59:47 2 have other investments with Merkin other than
05:59:50 3 Gabriel and Ascot?

05:59:53 4 A. Yes.

05:59:53 5 Q. What other investments did Sterling
05:59:55 6 Stamos have with Merkin?

05:59:57 7 A. I don't know the full names of all
05:59:58 8 the funds, but we invested in the offshore versions
06:00:01 9 of Ascot, as well as the offshore version of
06:00:05 10 Gabriel. We also invested in Long Horizons, and we
06:00:10 11 later found out that -- I'm not sure whether it was
06:00:12 12 later or contemporaneously that a set of investments
06:00:15 13 that were done jointly with Gabriel and Cerberus.

06:00:20 14 Q. Turning now to your e-mail in
06:00:28 15 response to Mr. Merkin, you write: "Sorry to have
06:00:37 16 hit you with so many 'urgent' messages on Friday."

06:00:42 17 Do you recall why you were sending so
06:00:43 18 many urgent messages to Mr. Merkin on that date?

06:00:47 19 A. I don't recall specifically, but
06:00:49 20 generally I think it was the topic that he's
06:00:50 21 referring -- that we're referring to here.

06:00:51 22 Q. And that's the SEC rule concerning
06:00:54 23 hedge fund registration?

06:00:56 24 A. And the potential implications for
06:00:58 25 Mr. Katz and Mr. Wilpon.

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06:01:00 1 Q. Okay. Did you discuss with
06:01:07 2 Mr. Merkin at this meeting that you had after this
06:01:10 3 e-mail exchange the SEC rule concerning hedge fund
06:01:14 4 registration and the potential implications for
06:01:17 5 Mr. Katz and Mr. Wilpon?

06:01:18 6 MR. GOUDISS: I object. Go ahead.

06:01:20 7 A. I don't recall when. I do recall
06:01:22 8 that I had conversations with Mr. Merkin about this
06:01:26 9 registration. And when I say conversations, those
06:01:29 10 conversations could have been by phone, could have
06:01:31 11 been in person, and it could have been by e-mail
06:01:34 12 that, you know, now five or six years later I think
06:01:37 13 of as a conversation. It just was many years ago.

06:01:40 14 Q. Okay. What was the substance of
06:01:42 15 those discussions that you had with Mr. Merkin
06:01:45 16 concerning this hedge fund registration rule?

06:01:49 17 A. Yeah. Just to be specific, if we can
06:01:51 18 characterize it in general discussions, e-mails and
06:01:54 19 communication. I'm not sure whether it was, as I
06:01:56 20 say, a phone conversation and meeting discussion or
06:01:58 21 just a set of e-mails that went back and forth. I
06:02:01 22 remember the sum and substance of the -- of the
06:02:03 23 information that was shared.

06:02:04 24 Q. Okay. And what was that sum and
06:02:08 25 substance?

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06:02:08 1 A. From my perspective or from his
06:02:11 2 perspective?

06:02:11 3 Q. Let's start with yours.

06:02:17 4 A. I had -- I'll just tell you one at a
06:02:20 5 time. So the first -- the first perspective I had
06:02:22 6 to address with him was if we were going to
06:02:27 7 register, which we intended to do, it -- it could
06:02:31 8 possibly have implications for Mr. Katz and
06:02:35 9 Mr. Wilpon and their investments with Bernard Madoff
06:02:39 10 up to and including the possibility that they would,
06:02:42 11 it was my hope, decide to redeem from Madoff and
06:02:47 12 create a diversified portfolio with us.

06:02:51 13 If that were the case, then that was
06:02:53 14 what I was referring to here, we would have to
06:02:56 15 significantly increase their options arbitrage
06:02:59 16 exposure because they would under-allocated to
06:03:04 17 options arbitrage.

06:03:05 18 Q. Can you explain that in a little more
06:03:06 19 detail? What do you mean by that?

06:03:08 20 A. Yes. Both -- it was our
06:03:09 21 understanding that both Mr. Madoff and Mr. Merkin
06:03:13 22 invested in options arbitrage. It was our
06:03:16 23 understanding that Mr. Madoff did short-term options
06:03:20 24 and that Mr. Merkin did long-term options, so-called
06:03:23 25 leaps. Both were valuable contributors to

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06:03:27 1 diversification in a portfolio of investments.

06:03:29 2 Q. And did Sterling have investments in
06:03:34 3 Merkin's funds?

06:03:36 4 A. Yes, through our fund of funds.

06:03:38 5 Q. Okay. So through Sterling Stamos,
06:03:41 6 Sterling had investments with -- Mr. Katz and
06:03:44 7 Mr. Wilpon had investments with Merkin's funds?

06:03:47 8 A. That's correct.

06:03:49 9 Q. Okay. Then I think you jumped to the
06:03:54 10 paragraph that I wanted to ask you about, why did
06:03:59 11 you need Mr. Merkin's counsel with respect to the
06:04:03 12 possibility that you may need to significantly
06:04:05 13 decrease or increase your exposure to options
06:04:09 14 arbitrage?

06:04:10 15 A. Because Mr. Merkin, in my view and in
06:04:12 16 the view of many in the industry, was second only to
06:04:16 17 Mr. Madoff, one of the best options arbitrage
06:04:20 18 traders in the hedge fund industry. And he could
06:04:24 19 provide an alternative for us.

06:04:26 20 Q. And what did Mr. Merkin say in
06:04:32 21 response to these issues that you raised?

06:04:34 22 A. I don't recall the specifics of his
06:04:37 23 response, but I do recall other e-mails that make
06:04:40 24 reference to some of his suggestions.

06:04:44 25 Q. What do you recall was discussed in

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06:04:46 1 those e-mails?

06:04:47 2 A. Unless I see them, I just general --
06:04:53 3 I have general -- general memory.

06:04:55 4 Q. Okay. What's your general memory?

06:04:58 5 A. I think he -- I recall him saying to
06:05:02 6 me that there were a couple of options for Mr. Katz
06:05:08 7 and Mr. Wilpon that would allow them to continue to
06:05:11 8 be investors with Mr. Madoff, and that he had an
06:05:14 9 idea of one that could solve the problem for them,
06:05:21 10 potential problem for them.

06:05:22 11 Q. Okay. And when you're referring to
06:05:28 12 solving the problem for them, what potential problem
06:05:31 13 are you referring to?

06:05:31 14 A. I think the problem that we're
06:05:33 15 referring to here is that we were going to register
06:05:36 16 and that was going to create disclosure,
06:05:40 17 confidentiality privacy issues for both Mr. Madoff,
06:05:43 18 as well as for Mr. Katz and Mr. Wilpon.

06:05:46 19 Q. And what was Mr. Merkin's view as to
06:05:52 20 those disclosure, confidentiality and privacy issues
06:05:56 21 for Katz and Wilpon?

06:05:58 22 A. I don't -- I don't recall having that
06:06:00 23 discussion with him.

06:06:01 24 Q. And what did Mr. Merkin recommend or
06:06:08 25 what did -- let me rephrase.

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06:06:10 1 What did Mr. Merkin say that would be
06:06:14 2 a possible option that would allow Katz and Wilpon
06:06:18 3 to continue to be investors with Mr. Madoff?

06:06:22 4 A. I don't recall him saying this, but I
06:06:24 5 do recall reading an e-mail from him describing an
06:06:27 6 option for us.

06:06:28 7 Q. And do you recall what that option
06:06:30 8 was?

06:06:31 9 A. Generally.

06:06:32 10 Q. Okay. Can you explain that?

06:06:34 11 A. I think that he suggested that there
06:06:38 12 was a possibility of setting up a -- a fund that
06:06:42 13 would manage their investments with Madoff and that
06:06:46 14 it would have -- it could have another general
06:06:51 15 partner who oversaw that, and I believe he in the
06:06:54 16 e-mail even volunteered to be that general partner
06:06:58 17 as a courtesy to the Wilpons and the Katzes.

06:07:03 18 Q. Was that -- was that fund ever set
06:07:05 19 up?

06:07:06 20 A. No.

06:07:06 21 Q. Did you discuss any other issues with
06:07:19 22 Mr. Merkin concerning Sterling Stamos' registration
06:07:26 23 as an investment advisor at this time?

06:07:28 24 A. If you say at this time, in that time
06:07:30 25 frame?

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06:07:31 1 Q. Yes, in the 2004 time frame.

06:07:32 2 A. Yes.

06:07:32 3 Q. What other issues did you discuss
06:07:34 4 with him?

06:07:34 5 A. I discussed whether -- whether and
06:07:36 6 what his plans were to register, as well as
06:07:39 7 Cerberus, Cerberus' plans to register, because he
06:07:44 8 was -- my understanding was he was a joint venture
06:07:46 9 partner with the manager of Cerberus as well.

06:07:51 10 Q. And generally what were his plans
06:07:55 11 with respect to registering?

06:07:56 12 A. My understanding from him was that he
06:07:58 13 and his partner Steve Feinberg were seeking to avoid
06:08:04 14 the complexity of registration, if it was possible
06:08:08 15 for them to do so.

06:08:09 16 Q. And how were they going to avoid the
06:08:12 17 complexity of registration?

06:08:14 18 A. The part that I remember him
06:08:16 19 expressing to me was that there was -- and I don't
06:08:21 20 know whether he expressed it orally or in writing,
06:08:23 21 but I remember the sum and substance of the
06:08:27 22 discussion was that by keeping the number of
06:08:30 23 individual funds that they managed, I believe it was
06:08:32 24 at 14 or less, and by extending the lockup to two
06:08:35 25 years, they would meet the exception requirements so

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06:08:38 1 they wouldn't have to register. So I remember that
06:08:41 2 from him to me.

06:08:43 3 Q. Did you ever discuss that exception
06:08:47 4 that Mr. Merkin discussed with you with respect to
06:08:50 5 Merkin's funds, did you ever discuss that with Saul
06:08:55 6 Katz or Fred Wilpon?

06:08:55 7 A. I don't --

06:08:58 8 MR. GOUDISS: As a possibility for
06:08:59 9 Sterling Stamos?

06:08:59 10 Q. Yes.

06:09:01 11 A. I don't recall specific conversation
06:09:04 12 with Mr. Katz or Mr. Wilpon about that, but I do
06:09:07 13 recall very specifically that it was our desire to
06:09:12 14 not do that, but to register no matter what.

06:09:15 15 Q. Okay. But you don't recall raising
06:09:18 16 that exception as another possible option to address
06:09:21 17 the concerns of Mr. Katz and Mr. Wilpon with
06:09:24 18 disclosing their investments with Madoff?

06:09:26 19 A. I don't recall that because that was
06:09:27 20 not our desire, our objective. Our objective was
06:09:32 21 not to avoid registration. Our objective was to
06:09:35 22 register, and I do recall expressing that to
06:09:38 23 Mr. Merkin.

06:09:38 24 Q. Did you express that sentiment to
06:09:41 25 Saul Katz?

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06:09:42 1 A. Which sentiment are you referring to?

06:09:44 2 Q. The one --

06:09:45 3 MR. GOUDISS: The desire to register?

06:09:47 4 Q. The one you just testified to which

06:09:49 5 was that your objective was not to avoid

06:09:52 6 registration, but to register.

06:09:55 7 A. Yes, I did express that, I'm

06:09:57 8 confident I expressed that to Mr. Katz.

06:09:59 9 Q. Did you express that to Mr. Wilpon as

06:10:02 10 well?

06:10:02 11 A. I don't recall a conversation with

06:10:05 12 Mr. Wilpon about that.

06:10:06 13 Q. And what was Mr. Katz's response?

06:10:11 14 A. Over what time frame?

06:10:13 15 Q. When you first told Mr. Katz that

06:10:16 16 your objective was not to avoid registration, but to

06:10:19 17 register, the first time you raised that sentiment

06:10:23 18 with Mr. Saul Katz, what did he say in response?

06:10:25 19 A. I don't remember whether he raised it

06:10:26 20 the first time or the second time. But at some

06:10:29 21 point he raised the concern about disclosure of

06:10:34 22 information from Mr. Madoff as well as privacy

06:10:37 23 issues regarding investments and business

06:10:39 24 transactions; that they, as wealthy individuals, did

06:10:43 25 not want to have to disclose.

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06:10:45 1 Q. And was he unhappy about the fact
06:10:48 2 that it was your position that you were essentially
06:10:51 3 going to register no matter what?

06:10:54 4 A. I don't think unhappy is how I would
06:10:56 5 characterize it.

06:10:56 6 Q. Well, how would you characterize it?

06:10:57 7 A. I would characterize it as
06:10:59 8 understanding and generally supportive, recognizing
06:11:05 9 that it would have implications on a day-to-day
06:11:08 10 basis between our two companies.

06:11:11 11 Q. And we discussed this morning the
06:11:16 12 steps that you took to address his concerns. Right?
06:11:19 13 Is that what you testified to this morning?

06:11:21 14 A. Yes.

06:11:21 15 Q. Okay. Did you or anyone at Sterling
06:11:28 16 Stamos ever raise -- or ever tell Merkin that you
06:11:28 17 did not want any of the Merkin funds that Sterling
06:11:28 18 Stamos was invested with to be invested with Madoff?

06:11:28 19 A. Yes.

06:11:49 20 Q. How often did you express that
06:11:50 21 sentiment to Mr. Merkin?

06:11:52 22 A. I don't -- I can't answer the number,
06:11:55 23 but I know that it was on definitely more than one
06:11:57 24 or two or three occasions.

06:11:59 25 Q. And why did you repeatedly tell

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06:12:02 1 Mr. Merkin that you did not want any of the Merkin
06:12:06 2 funds that Sterling Stamos was invested in to be
06:12:08 3 invested with Madoff?

06:12:10 4 A. Why I did it was for two reasons.
06:12:14 5 One is whenever a rumor was raised, it's my
06:12:18 6 responsibility to confirm that that rumor was false,
06:12:20 7 so whenever that occurred I would raise it with him.

06:12:23 8 And the second reason I raised it,
06:12:25 9 which is the overarching reason consistent
06:12:27 10 throughout the time that we were investors, is that
06:12:29 11 we did not want to have doubling up of exposure to
06:12:33 12 Mr. Madoff through a feeder fund which would have
06:12:38 13 two problems for us. First and foremost, it would
06:12:42 14 mean that Mr. Merkin was not being honest. And,
06:12:46 15 second, it would be completely irrational to have my
06:12:50 16 largest investor, because they represented 40 or 50
06:12:55 17 percent of our assets --

06:12:55 18 Q. You're referring to --

06:12:57 19 A. Mr. Katz and Mr. Wilpon, get
06:12:59 20 increased exposure to the exact manager that we were
06:13:01 21 trying to diversify, A, and B, pay an extra fee for
06:13:06 22 that privilege.

06:13:09 23 Q. Did any members of your team, Ashok
06:13:15 24 or Kevin Okimoto or Kevin Barcelona, raise those
06:13:19 25 issues with Mr. Merkin as well?

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06:13:21 1

A. Yes.

06:13:22 2

Q. How often?

06:13:24 3

A. I don't know the specific frequency,

06:13:26 4

but I know that Mr. Chachra did on several

06:13:30 5

occasions.

06:13:30 6

Q. And each time Mr. Merkin indicated

06:13:33 7

that -- or said that he was not invested in Madoff.

06:13:38 8

Is that right?

06:13:38 9

A. To the best of my knowledge, in every

06:13:40 10

conversation he was consistent that way, correct.

06:13:43 11

Q. So in paragraph 2 of Exhibit 9, the

06:13:56 12

"I will call you later today," that sentence, that

06:13:59 13

paragraph, when you were referring to "significantly

06:14:04 14

decrease or increase our exposure to options

06:14:07 15

arbitrage," and you were referencing Ascot and

06:14:14 16

Ariel, at that time you did not know that Ascot or

06:14:16 17

Ariel was invested with Madoff?

06:14:19 18

A. Correct, absolutely correct. I

06:14:24 19

believe I may have made a mistake in this e-mail

06:14:27 20

with Ariel.

06:14:27 21

Q. Okay. What was the mistake?

06:14:29 22

A. I don't know what the offshore

06:14:30 23

version of Ascot is called. I think the offshore

06:14:34 24

version of Ascot is called Ascot and I think Ariel

06:14:37 25

is the offshore version of Gabriel, but I may be

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06:14:40 1 mistaken.

06:14:48 2 Q. Did you ever have lunch with
06:14:59 3 Mr. Merkin and Saul Katz or Fred Wilpon together?

06:15:05 4 A. At any time over a period of eight
06:15:07 5 years?

06:15:08 6 Q. Yeah.

06:15:09 7 A. I don't recall that -- a specific
06:15:12 8 lunch with all of those people present. I do recall
06:15:15 9 meetings with those people, but I don't recall a
06:15:18 10 specific lunch.

06:15:19 11 Q. Do you recall -- so you don't recall
06:15:26 12 any -- any meetings or lunches that you attended
06:15:29 13 with Mr. Merkin that Mr. Wilpon was also in
06:15:34 14 attendance?

06:15:35 15 A. You said lunch. I said -- I don't
06:15:37 16 recall a lunch. I do recall having meetings and I
06:15:40 17 do believe there were some meetings with all those
06:15:42 18 people present. But I don't recall a lunch that I
06:15:44 19 can think of specifically.

06:15:45 20 Q. Okay. Well, let's talk about the
06:15:46 21 meetings then. Can you tell me about any meetings
06:15:50 22 in which Mr. Merkin and Fred Wilpon and Saul Katz
06:15:54 23 and yourself were present?

06:15:57 24 A. Generally speaking, I remember having
06:16:00 25 some discussions with that group of people about the

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06:16:03 1 possibility of Sterling Stamos and Ezra Merkin doing
06:16:11 2 more together even to the point of potentially a
06:16:13 3 joint venture or a merger.

06:16:18 4 Q. And what were the -- what was the
06:16:20 5 substance of those discussions about doing more
06:16:23 6 business with Merkin in a potential merger, what was
06:16:27 7 discussed?

06:16:27 8 A. In general the concept was that we
06:16:30 9 would eliminate some of the single manager risk we
06:16:34 10 had with me as the sole CIO by having a dual
06:16:38 11 partner, and that we brought complementary skills,
06:16:42 12 he as a direct investor and I as a manager of fund
06:16:46 13 of funds, that would create a more robust,
06:16:50 14 well-diversified company with co-managers as opposed
06:16:53 15 to a single manager.

06:16:54 16 Q. And within those discussions of
06:16:56 17 possibly joining forces with Merkin, did the subject
06:16:59 18 of Katz and Wilpon's investments with Madoff ever
06:17:04 19 come up?

06:17:05 20 A. I don't recall a specific
06:17:06 21 conversation about Madoff in that context.

06:17:28 22 Q. I'm going to hand you what's been
06:17:30 23 marked as Exhibit 10.

06:17:49 24 I've given you what's been marked as
06:17:51 25 Exhibit 10, which is an e-mail from David Hood to

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06:17:54 1 you and Ashok Chachra, dated December 14th, 2008,
06:17:59 2 forwarding an article concerning Mr. Madoff that was
06:18:05 3 published earlier, I believe May of 2001. Take a
06:18:13 4 moment to review it, Mr. Stamos, and let me know
06:18:17 5 when you're ready.

06:21:18 6 A. I've read it. Thank you.

06:21:19 7 Q. Okay. Did you read this article,
06:21:32 8 "Don't Ask, Don't Tell" article, did you read it
06:21:34 9 before December 14th, 2008?

06:21:36 10 A. I don't recall reading this article
06:21:38 11 before December 14th, 2008.

06:21:40 12 Q. Before December -- before December
06:21:47 13 14th, 2008, had you heard of articles criticizing or
06:21:54 14 questioning Madoff's strategy and the fact that he
06:21:58 15 was so secretive and so forth?

06:22:00 16 A. I believe I heard some reference to
06:22:03 17 an article at some point, but I don't recall when.

06:22:07 18 Q. Was that reference -- was that
06:22:10 19 reference to an article in reference to the "Don't
06:22:13 20 Ask, Don't Tell" article that's in Exhibit 10?

06:22:17 21 A. I don't know and I don't recall. I
06:22:19 22 don't recall. I don't know.

06:22:21 23 Q. Why did David Hood write: "I'm sure
06:22:24 24 you saw this at the time"? Do you know why he wrote
06:22:27 25 that?

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06:22:27 1 A. I don't know.

06:22:30 2 Q. Do you recall discussing any articles
06:22:36 3 concerning Madoff with Saul Katz?

06:22:40 4 A. I don't recall having that
06:22:41 5 conversation with Mr. Katz.

06:22:44 6 Q. Do you recall having any discussions
06:22:46 7 with Fred Wilpon concerning any articles or stories
06:22:50 8 in the press about Mr. Madoff prior to December
06:22:53 9 2008?

06:22:54 10 A. No.

06:23:02 11 Q. Did you ever consider whether the S&P
06:23:08 12 100, the options market, whether that could handle
06:23:11 13 the capacity that Madoff was trading? Did that
06:23:14 14 issue ever arise?

06:23:16 15 A. For me as an individual investor?

06:23:18 16 Q. Yes.

06:23:19 17 A. No.

06:23:19 18 Q. And what about as Sterling Stamos,
06:23:22 19 did anyone at Sterling Stamos ever raise that issue
06:23:25 20 with you?

06:23:25 21 A. Not that I can recall.

06:23:29 22 Q. Were you aware prior to December 2008
06:23:35 23 that many of the key positions within Madoff's
06:23:40 24 investment company and his market making side of the
06:23:44 25 business were held by members of his family?

PETER S. STAMOS - August 19, 2010

06:23:46 1 A. No.

06:23:46 2 Q. You were not aware of that prior to
06:23:48 3 December 2008?

06:23:50 4 A. I don't -- I don't recall being aware
06:23:52 5 of that ever. I may have read about it after
06:23:57 6 December 12th, but I don't recall about it before
06:23:59 7 December 12th.

06:24:00 8 Q. Okay. Were you aware of any SEC
06:24:07 9 investigations of Mr. Madoff or his investment firm
06:24:12 10 prior to December 2008?

06:24:14 11 A. I had heard of investigations.

06:24:17 12 Q. And how had you heard of those -- how
06:24:19 13 did you hear about those investigations?

06:24:21 14 A. From Mr. Katz.

06:24:22 15 Q. And what did Mr. Katz tell you about
06:24:25 16 the SEC investigations of Madoff?

06:24:27 17 A. He was very clear, he used it as a
06:24:30 18 counter-argument to why we should have any concerns
06:24:34 19 about Mr. Madoff.

06:24:37 20 Q. What other points did Mr. Katz raise
06:24:41 21 as counter-arguments to having any concerns with
06:24:46 22 investing with Madoff?

06:24:47 23 A. As an example, his long-term track
06:24:52 24 record.

06:24:52 25 Q. Right.

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06:24:52 1 A. His impeccable reputation, his prior
06:24:56 2 positions held at the NASDAQ, his personal
06:25:03 3 relationship with Mr. Madoff, which was long-term
06:25:06 4 and trust-based, and I would -- and he described it
06:25:10 5 as familial, family-like.

06:25:13 6 Q. With respect to the long-term track
06:25:16 7 record, could that also be an issue for concern if a
06:25:21 8 fund continues to bring back consistent returns?

06:25:26 9 MR. GOUDISS: I object. Go ahead.

06:25:27 10 A. We invest in managers who have
06:25:30 11 long-term track records of consistent returns as
06:25:34 12 good and better than Bernard Madoff. So we view
06:25:38 13 that as a positive, not as a negative.

06:25:40 14 Q. The reason why I asked that was
06:25:44 15 because, I'll have to go back to the document, but
06:25:48 16 Exhibit 8, if you go back to Exhibit 8, page 10 at
06:25:58 17 the bottom, 807, the page ending in 807, the one we
06:26:03 18 discussed earlier --

06:26:05 19 A. Yes, yes.

06:26:09 20 Q. -- the fourth bullet: "Our risk due
06:26:14 21 diligence," that bullet, number 3 says: "At risk
06:26:18 22 will flag unusual characteristics, like super steady
06:26:21 23 returns and no negative months," et cetera.

06:26:24 24 A. Yes.

06:26:24 25 Q. Okay. So if you can just explain to

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06:26:26 1 me how you reconcile those two points, that you look
06:26:29 2 for firms that have consistent returns, but at the
06:26:31 3 same time you flag ones that have super steady
06:26:35 4 returns.

06:26:35 5 MR. GOUDISS: I object. Go ahead.

06:26:38 6 A. For analysis, we flag them for
06:26:44 7 analysis.

06:26:44 8 Q. Okay. So if a -- if a firm has super
06:26:47 9 steady returns or consistent returns, you flag that
06:26:50 10 for further analysis to determine whether there is
06:26:52 11 any issue there?

06:26:53 12 A. Any issue, correct, investment, risk,
06:26:56 13 operational or otherwise.

06:26:58 14 Q. Okay. All right. Do you know Jim
06:27:13 15 Simons?

06:27:13 16 A. I don't know him personally, but I
06:27:17 17 know who he is.

06:27:17 18 MR. GOUDISS: Assuming that he's
06:27:19 19 referring to the same Jim Simons.

06:27:23 20 Q. Yes, from Renaissance.

06:27:25 21 A. Yes.

06:27:25 22 Q. Okay. Do you know whether or not
06:27:27 23 Mr. Simons had any investments with Madoff?

06:27:30 24 A. I don't have any personal knowledge
06:27:33 25 of that. I may have read about it, but I don't know

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06:27:36 1 about it personally.

06:27:37 2 Q. Did you ever have any discussions
06:27:38 3 with anyone from Renaissance concerning Madoff?

06:27:42 4 A. Did I personally?

06:27:43 5 Q. Yes.

06:27:44 6 A. No, not that I can recall.

06:27:48 7 Q. What about Acorn Partners, do you
06:27:51 8 know who that is?

06:27:51 9 A. I don't recall who it is. I'm not --
06:27:54 10 I'm not familiar with Acorn Partners, or I can't
06:27:58 11 recall who they are.

06:28:00 12 Q. Do you know Robert Rosenkranz?

06:28:03 13 A. I do know Robert Rosenkranz, yes.

06:28:06 14 Q. If he's the same Robert Rosenkranz I
06:28:11 15 think we're talking about, I think he was a
06:28:13 16 principal or a founder of Acorn.

06:28:15 17 A. Then I'm referring to a different
06:28:17 18 Robert Rosenkranz.

06:28:18 19

06:28:20 20

06:28:21 21

06:28:24 22

REDACTED

06:28:26 23

06:28:30 24

06:28:41 25

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REDACTED

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REDACTED

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06:31:48 17
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06:32:04 23
06:32:05 24
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- 06:32:30 7
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- 06:32:35 9
- 06:32:38 10
- 06:32:40 11
- 06:32:43 12
- 06:32:45 13
- 06:32:45 14
- 06:32:46 15
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- 06:33:07 23
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- 06:33:12 25

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06:33:37 9

REDACTED

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06:34:00 20

REDACTED

06:34:01 21

06:34:04 22

06:34:07 23

06:34:11 24

Q. Who is Peter Dunne? Do you know

06:34:18 25

Peter Dunne?

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06:34:18 1 A. I don't recall who Peter Dunne is.

06:34:25 2 Q. I'm going to show this to you, maybe
06:34:27 3 it will refresh your recollection. I give you
06:34:29 4 what's been marked as Plaintiffs' Exhibit 11 --
06:34:37 5 rather, Stamos Exhibit 11. It's an e-mail exchange
06:34:52 6 between you and Peter Dunne of February 11th, 2004,
06:34:57 7 that was then forwarded along to Kevin Okimoto and
06:35:01 8 others. Let me know when you're ready to discuss.

06:35:32 9 A. Yes, I've read this.

06:35:34 10 Q. Okay. Now that you've read this --
06:35:40 11 this e-mail, does that refresh your recollection as
06:35:42 12 to who Peter Dunne might be?

06:35:45 13 A. I -- I can't recall who he is. By
06:35:48 14 reading this, my assumption is that he's one of
06:35:51 15 Saul's friends, who was referring a potential client
06:35:53 16 to us.

06:35:54 17 Q. Okay. Do you know who Arnold
06:36:00 18 Anisgarten is?

06:36:02 19 A. I don't believe I know -- I can't
06:36:05 20 recall.

06:36:05 21 Q. Mr. Dunne asks if -- in this e-mail
06:36:15 22 to schedule an appointment with -- between you and
06:36:19 23 Arnold and his client to someone who has a
06:36:23 24 substantial sum with Mr. Madoff. Do you recall if
06:36:26 25 you ever had that meeting with Mr. Anisgarten and/or

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06:36:31 1 his client?

06:36:31 2 A. I don't recall flying to Los Angeles
06:36:34 3 and having that meeting.

06:36:35 4 Q. Did you have any discussions with Mr.
06:36:44 5 Dunne concerning Mr. Madoff at all that you recall?

06:36:51 6 A. I don't recall who Mr. Dunne is, so I
06:36:54 7 don't recall any conversations.

06:36:55 8 Q. Okay. We've -- you've testified to
06:37:12 9 several individuals that you know of that were
06:37:13 10 invested in Madoff that diversified and then
06:37:17 11 invested with Sterling Stamos. We went through
06:37:22 12 several of them earlier today.

06:37:23 13 A. Yes.

06:37:24 14 Q. Other than the ones that you've
06:37:30 15 listed earlier, can you think of anyone else who was
06:37:32 16 invested in Madoff that then invested with Sterling
06:37:36 17 Stamos?

06:37:37 18 A. I don't recall their names. I know
06:37:40 19 that there are a number of investors who invested
06:37:43 20 with Mr. Madoff, who were friends of Saul and Fred's
06:37:47 21 who were introduced to us and have -- and some made
06:37:52 22 decisions to invest with us.

06:37:54 23 Q. If you wanted to determine who those
06:37:56 24 investors were, would there be any set of records or
06:37:59 25 documents that you could review to determine that?

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06:38:01 1 A. I don't believe so. I said we don't
06:38:06 2 check the source of inflows of capital.

06:38:10 3 Q. Would there be any notation in a
06:38:15 4 contact list or Rolodex or something that someone
06:38:20 5 who invested -- currently invested in Sterling
06:38:22 6 Stamos was a former or current Madoff investor?

06:38:25 7 A. It -- I don't -- I'm not aware of
06:38:28 8 those documents. It is possible that there are
06:38:30 9 documents like that.

06:38:31 10 Q. Okay. Do you know Jim Vos?

06:38:46 11 A. I don't recall who Jim Vos is.

06:38:48 12 Q. Do you know Jake Walthor?

06:38:51 13 A. I don't recall that name.

06:38:53 14 Q. Okay. Have you ever heard of a
06:38:56 15 company called Aksia?

06:38:58 16 A. I don't recall a company Aksia.

06:39:11 17 Q. Do you recall receiving any reports
06:39:16 18 from any research -- investment research groups
06:39:22 19 concerning Madoff prior to December of 2008?

06:39:25 20 A. I do not recall that.

06:39:36 21 MR. BOHORQUEZ: All right. We have
06:39:37 22 less than five minutes on the tape, so I think we'll
06:39:40 23 take a break.

06:39:42 24 THE VIDEOGRAPHER: Going off the
06:39:43 25 record. The time is 6:40. This ends tape number 5.

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06:39:52 1

(Brief recess.)

06:51:19 2

THE VIDEOGRAPHER: We are back on the

06:51:30 3

record. The time is 6:52. This is tape number 6.

06:51:34 4

BY MR. BOHORQUEZ:

06:51:39 5

Q. Mr. Stamos, how did you find out that

06:51:43 6

Bernie Madoff had been arrested for fraud?

06:51:46 7

A. I believe I got a call or an e-mail

06:51:49 8

from Mr. Chachra. I believe it was a phone call

06:51:54 9

from Mr. Chachra.

06:51:55 10

Q. And when did you receive that call?

06:51:58 11

A. If Thursday, December 12th is the

06:52:02 12

date --

06:52:02 13

Q. December 11th.

06:52:03 14

A. December 11th, if it's Thursday,

06:52:05 15

December 11th, I believe it was that afternoon or

06:52:08 16

late morning, west coast time.

06:52:10 17

Q. And what did Mr. Chachra say on the

06:52:13 18

phone call?

06:52:14 19

A. I believe it was Mr. Chachra, I don't

06:52:17 20

recall specifically, but whether it was Mr. Chachra

06:52:20 21

and/or Mr. Barcelona, I believe it was Mr. Chachra,

06:52:23 22

and I believe what he said was something along the

06:52:26 23

lines of: You won't believe this, but Bernie Madoff

06:52:29 24

has just been arrested.

06:52:31 25

Q. Did he say anything else?

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06:52:33 1 A. I don't recall anything beyond that
06:52:35 2 headline.

06:52:37 3 Q. Okay. And what do you recall your
06:52:39 4 response was?

06:52:40 5 A. Can you be more specific? My
06:52:44 6 response to him?

06:52:45 7 Q. Yes.

06:52:47 8 A. I believe my response to him was:
06:52:51 9 Oh, my God, poor Saul and Fred.

06:52:56 10 Q. Anything else do you recall?

06:52:58 11 A. I believe I also asked him --
06:53:01 12 requested that he would go to try -- to try to find
06:53:03 13 out some more information about what was going on.

06:53:07 14 Q. Now, a few weeks later, on December
06:53:14 15 30th, I believe, of 2008, is when you alerted to
06:53:19 16 your investors that you, indeed, had had some
06:53:23 17 exposure to Madoff through some of the Merkin funds,
06:53:27 18 Gabriel and Ascot, I believe.

06:53:30 19 A. No. Gabriel.

06:53:32 20 Q. Gabriel.

06:53:33 21 A. And its offshore version.

06:53:36 22 Q. Which was?

06:53:37 23 A. I believe Ariel.

06:53:39 24 Q. Okay. Using those two dates as book
06:53:42 25 ends, can you just walk me through what happened

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06:53:45 1 from when you first found out about the fraud to
06:53:48 2 when you eventually revealed to your investors that
06:53:51 3 you had had some indirect exposure to Madoff?

06:53:54 4 MR. GOUDISS: Object to the form. Go
06:53:56 5 ahead.

06:53:56 6 A. That's a long period of time, so I
06:53:58 7 can answer it in pieces.

06:53:59 8 Q. Absolutely. Just --

06:54:03 9 A. What I recall, and some of this is
06:54:06 10 recollection and some of it is things I now remember
06:54:11 11 having read things recently, that I asked Mr.
06:54:18 12 Chachra to go -- I believe I asked him to go talk to
06:54:21 13 Mr. Merkin, who was very close to Mr. Madoff, to see
06:54:24 14 if he had any other information.

06:54:27 15 Q. And what happened next?

06:54:29 16 A. I feel a little uncomfortable
06:54:36 17 testifying as to what happened next because I was
06:54:38 18 not there, so the only thing I know about what
06:54:41 19 happened was what I read later on and what Mr.
06:54:44 20 Chachra said to me.

06:54:44 21 Q. Okay. What did Mr. Chachra say to
06:54:46 22 you?

06:54:46 23 A. I believe what he said is he didn't
06:54:49 24 get any more information from Mr. Merkin, that
06:54:52 25 Mr. Merkin didn't have any more information to

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06:54:54 1 share.

06:54:55 2 Q. And how did you come to discover that
06:55:00 3 the Gabriel fund was actually invested in Madoff?

06:55:05 4 A. What I came to understand was on
06:55:08 5 Friday morning, the following day, while I was in
06:55:13 6 the series of Stanford board meetings, the
06:55:17 7 investment committee, followed by the finance
06:55:19 8 committee, followed by the board meeting, which was,
06:55:22 9 generally speaking, close to a whole-day affair,
06:55:24 10 first I believe it was an e-mail or a phone call
06:55:26 11 from Mr. Chachra or Mr. Barcelona, or both,
06:55:31 12 explaining to me that they had just found out that
06:55:36 13 Gabriel may have its cash, some of its cash invested
06:55:41 14 with Mr. Madoff.

06:55:42 15 Q. And how did Mr. Barcelona or Mr.
06:55:47 16 Chachra come to that conclusion?

06:55:48 17 A. I believe that the sequence of events
06:55:52 18 was that Mr. Chachra had seen either a news report
06:56:01 19 or a television report that had a reference to one
06:56:05 20 of Mr. Merkin's funds, and I believe Mr. Chachra and
06:56:10 21 Mr. Barcelona went to meet with the CFO for or
06:56:17 22 called the CFO of Gabriel Capital, whose name is, I
06:56:23 23 believe, Mike Autera.

06:56:25 24 Q. And after Mr. Chachra -- and what was
06:56:32 25 the result of the discussion that Mr. Chachra and

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06:56:34 1 Mr. Barcelona had with Gabriel's CFO?

06:56:39 2 A. At this point my knowledge is very
06:56:41 3 slim because I'm now chairing committee meetings and
06:56:44 4 in meetings, so it's what I received on my e-mails
06:56:46 5 and any brief phone calls that came in-between
06:56:51 6 meetings.

06:56:51 7 Q. What knowledge do you have?

06:56:53 8 A. The knowledge I have is that what I
06:56:56 9 just stated, which was that Mr. Autera, I believe,
06:57:01 10 confirmed with or stated to Mr. Barcelona and/or Mr.
06:57:07 11 Chachra that Gabriel had some of its cash invested
06:57:11 12 with Mr. Madoff.

06:57:14 13 Q. Did you ever confront Mr. Merkin
06:57:26 14 about the fact that Gabriel had investments with
06:57:30 15 Madoff?

06:57:31 16 A. Are you speaking about at that time
06:57:33 17 frame?

06:57:33 18 Q. At that time frame --

06:57:35 19 A. No.

06:57:35 20 Q. -- between December 11th and December
06:57:38 21 30th, 2008.

06:57:39 22 A. Did I personally?

06:57:39 23 Q. Yes.

06:57:41 24 A. No.

06:57:41 25 Q. Why not?

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06:57:42 1 A. Mr. -- I instructed Mr. Chachra to do
06:57:44 2 so.

06:57:44 3 Q. And why did you instruct Mr. Chachra
06:57:47 4 to do so?

06:57:47 5 A. Because he was the chief investment
06:57:51 6 strategist and the portfolio manager for that
06:57:53 7 portfolio and he was in New York, as was Mr. Merkin.

06:57:55 8 Q. So you instructed Mr. Chachra to
06:57:58 9 speak to Mr. Merkin about the investments that
06:58:03 10 Gabriel had with Madoff?

06:58:05 11 A. Yes.

06:58:06 12 Q. Okay. And when did Mr. Chachra have
06:58:10 13 that meeting or discussion with Mr. Merkin?

06:58:12 14 A. I don't recall the exact date, but in
06:58:14 15 that time frame.

06:58:16 16 Q. Okay. Sometime between the 11th and
06:58:18 17 the 30th of December?

06:58:19 18 A. Sometime I think between the 12th and
06:58:22 19 the 30th of December.

06:58:23 20 Q. 12th and 30th, okay. Did anyone else
06:58:26 21 from Sterling Stamos meet with Mr. Merkin?

06:58:29 22 A. I don't recall whether Mr. Barcelona
06:58:31 23 was in attendance with Mr. Chachra or not.

06:58:34 24 Q. And then as a result of that
06:58:38 25 meeting -- what was the result of that meeting that

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06:58:41 1 Mr. Chachra had with Mr. Merkin concerning the
06:58:43 2 possible Madoff investments?

06:58:45 3 A. I don't recall the specifics of that.
06:58:49 4 I recall in general it was a confirmation that he
06:58:55 5 actually had investments with Mr. Madoff, that
06:58:59 6 Mr. Merkin had investments with Mr. Madoff both in
06:59:03 7 the Ascot fund as well as in the Gabriel fund.

06:59:09 8 Q. Okay. Did you have any discussions
06:59:44 9 with David Katz concerning the possibility that
06:59:50 10 Sterling Stamos may have been -- may have been
06:59:54 11 invested with Madoff through one of the Merkin
06:59:58 12 funds?

06:59:58 13 A. During which time frame?

07:00:00 14 Q. Between December -- actually, on or
07:00:04 15 about December 12th, 2008.

07:00:07 16 A. I don't recall specific conversation
07:00:08 17 with David Katz at that time. I recall having a
07:00:12 18 number of conversations with investors, but I don't
07:00:14 19 recall who specifically I had conversations with
07:00:16 20 during that time frame.

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Q. I'm going to hand you what's been marked as Stamos Exhibit 13, it's titled "Talking Points for Exposure to Madoff Securities." If you could just review that and let me know when you're ready, I have a few questions.

A. Yes, I'm ready.

Q. Okay. Do you know who prepared

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07:14:16 1 Exhibit 13?

07:14:18 2 A. I believe this was prepared by the
07:14:21 3 same team that we referred to for the other talking
07:14:24 4 points, some combination of members of the
07:14:27 5 communication team and the partner relations team.

07:14:31 6 Q. That was, I believe, Exhibit 8
07:14:33 7 earlier, the talking points from December 16th,
07:14:37 8 2008.

07:14:38 9 A. I believe it was the same team.

07:14:58 10 Q. Okay. Can you go down to the bottom
07:15:08 11 of the first page of Exhibit 13, the bullet that
07:15:12 12 reads "Ascot Partners."

07:15:13 13 A. Yes.

07:15:13 14 Q. Now, we discussed how you -- how your
07:15:18 15 team had additionally identified Gabriel as
07:15:20 16 potentially having exposure to Madoff.

07:15:23 17 A. Yes.

07:15:23 18 Q. How did your team identify Ascot
07:15:25 19 Partners as potentially having exposure to Madoff?

07:15:28 20 A. I believe that was reported in the
07:15:30 21 press.

07:15:31 22 Q. Okay. So based on the press reports,
07:15:36 23 your team followed up on that with respect to Ascot?

07:15:40 24 A. Yes.

07:15:40 25 MR. GOUDISS: I object.

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07:15:41 1 Q. If you can turn to page 2 of Exhibit
07:15:48 2 13, the second bullet -- actually, the second circle
07:15:57 3 bullet because there are various on there, the one
07:15:59 4 that begins with "In December 2007," do you see
07:16:03 5 that?

07:16:03 6 A. Yes.

07:16:04 7 Q. It references the fact that Sterling
07:16:11 8 Stamos redeemed its funds from Ascot.

07:16:14 9 A. Yes.

07:16:14 10 Q. Right? Okay. Can you explain to me
07:16:17 11 why Sterling Stamos redeemed its funds from Ascot in
07:16:22 12 December of 2007?

07:16:22 13 A. Yes.

07:16:23 14 Q. Okay. Please do so.

07:16:25 15 A. Mr. Merkin was unwilling to fill out
07:16:28 16 the disclosure report, the transparency report that
07:16:33 17 I referred to in my earlier testimony, which we
07:16:36 18 adopted post the merger with Merrill Lynch, which
07:16:39 19 was in June of 2000 -- July of 2007.

07:16:43 20 Q. And why did Mr. Merkin refuse to fill
07:16:47 21 out the transparency report?

07:16:49 22 A. I don't know why he did. He did not
07:16:53 23 do it, but he said he would not do it.

07:16:56 24 Q. Did you have discussions with him
07:16:58 25 about the transparency report for Ascot?

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07:17:02 1 A. Yes.

07:17:02 2 Q. And what -- what did you express to
07:17:05 3 him and what did he say to you?

07:17:07 4 A. I expressed that it was a requirement
07:17:09 5 that we have from our operational and due diligence
07:17:15 6 standpoint, and that, reluctantly, because he either
07:17:17 7 wouldn't or couldn't fill out the transparency
07:17:20 8 report, we would have to redeem.

07:17:23 9 Q. Were there any other firm managers
07:17:24 10 that refused to fill out the transparency report?

07:17:28 11 MR. GOUDISS: Fund managers I think
07:17:30 12 you mean --

07:17:31 13 A. Fund managers?

07:17:32 14 Q. Fund managers, yes.

07:17:33 15 A. If you rephrase the question as
07:17:35 16 either refused or were unable to, I can answer that
07:17:38 17 question.

07:17:39 18 Q. Consider it rephrased.

07:17:40 19 A. Refused or were unable, I believe
07:17:43 20 that D.E. Shaw was not able to complete the
07:17:48 21 transparency report as well, and I also believe that
07:17:51 22 Renaissance Capital was not capable of filling out
07:17:54 23 the transparency report.

07:17:57 24 Q. So D.E. Shaw and Renaissance were
07:18:00 25 unable, were not capable --

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07:18:02 1 A. Either unable or unwilling, I'm not
07:18:04 2 sure why.

07:18:04 3 Q. Okay. Any other --

07:18:07 4 A. I believe that's the -- that's the
07:18:08 5 case with both of those managers.

07:18:10 6 Q. Okay. Any other managers?

07:18:12 7 A. I can't recall.

07:18:16 8 Q. When Mr. Merkin refused to fill out
07:18:23 9 the transparency report for Ascot, did you share
07:18:27 10 that fact with anyone at Sterling?

07:18:30 11 A. I don't recall having that
07:18:32 12 conversation with anyone at Sterling.

07:18:35 13 Q. Did anyone at Sterling Stamos have
07:18:40 14 any discussions with anyone at Sterling about the
07:18:43 15 fact that Mr. Merkin refused to fill out the
07:18:46 16 transparency report for Ascot?

07:18:48 17 A. I don't recall that occurring.

07:18:52 18 Q. Okay. Prior to December 11th, 2008
07:19:12 19 what is your understanding of how Madoff made money
07:19:14 20 through his investment advisory business?

07:19:19 21 MR. GOUDISS: Object. Go ahead.

07:19:21 22 A. My understanding in general based
07:19:25 23 upon my experience as an individual investor and
07:19:29 24 based upon conversations that I had with Mr. Katz,
07:19:32 25 was that he didn't charge a management fee, but

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07:19:34 1 instead was compensated on the brokerage commissions
07:19:39 2 or fees generated through his trading activity.

07:19:47 3 Q. Did you ever have any questions about
07:19:49 4 his commissions or fee structure?

07:19:52 5 A. As an individual investor?

07:19:53 6 Q. Yes.

07:19:54 7 A. Not that I recall.

07:19:58 8 Q. Did you ever hear any criticisms or
07:20:02 9 any concerns expressed by others questioning the
07:20:07 10 commissions or fees that Mr. Madoff made off of his
07:20:11 11 investments?

07:20:11 12 A. I don't recall specific
07:20:13 13 conversations. General conversations about the
07:20:16 14 topic I recall hearing.

07:20:17 15 Q. Okay. And what did you recall about
07:20:20 16 those general discussions?

07:20:21 17 A. I recall hearing or reading that -- I
07:20:26 18 believe it was hearing, that -- that Mr. Madoff was
07:20:33 19 leaving a lot of potential fees on the table by not
07:20:36 20 charging a management fee and an incentive fee.

07:20:40 21 Q. Do you recall who -- who told you
07:20:42 22 that?

07:20:43 23 A. No, I don't recall.

07:20:45 24 Q. Did the fact that there were
07:20:53 25 discussions that Mr. Madoff was leaving a lot of

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07:20:57 1 potential fees on the table by not charging a
07:21:00 2 management fee or an incentive fee, did that raise
07:21:03 3 any concerns with you?

07:21:04 4 A. Not that I recall, other than just
07:21:06 5 curiosity.

07:21:08 6 Q. Earlier we had spoken about an e-mail
07:21:18 7 that Ms. Ou -- I can't remember her name -- OuYang,
07:21:24 8 Ms. OuYang?

07:21:24 9 A. Jia.

07:21:25 10 Q. Yes, Jia, thank you. It's been a
07:21:28 11 long day. That Ms. Jia had -- had written an e-mail
07:21:33 12 that Sterling Stamos' CIO had expressed that Madoff
07:21:37 13 was a scam or too good to be true, she had written
07:21:44 14 that in the e-mail.

07:21:45 15 Did anyone at any time at Sterling
07:21:48 16 Stamos ever express their belief that Madoff was a
07:21:52 17 scam or too good to be true?

07:21:54 18 A. Prior to December 11th?

07:21:56 19 Q. Yes.

07:21:57 20 A. I don't recall ever hearing those
07:21:59 21 phrases in Sterling Stamos prior to December 11th.

07:22:05 22 Q. Do you know if Tim Dick was an
07:22:09 23 investor in Madoff?

07:22:11 24 A. I don't know. I don't believe so,
07:22:14 25 but I don't know.

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07:22:16 1 Q. And do you know when the introductory
07:22:20 2 discussion that Mr. Dick had with Saul Katz
07:22:23 3 concerning Changing World Technologies, do you know
07:22:30 4 when that discussion occurred?

07:22:32 5 A. I believe it was roughly at the early
07:22:35 6 stages of the development of our firm, so I believe
07:22:37 7 it was late 2002, perhaps early 2003.

07:22:42 8 Q. And do you know why Mr. Dick was
07:22:44 9 looking into, quote, unquote, Bernie's math as he
07:22:49 10 wrote in that e-mail if you had -- if you had
07:22:53 11 referred him to Mr. Katz to discuss Changing World
07:22:58 12 Technologies?

07:22:58 13 MR. GOUDISS: I object. Go ahead.

07:22:59 14 A. I do not know why.

07:23:05 15 Q. Earlier you testified that Madoff --
07:23:18 16 that you had had -- let me rephrase -- that there
07:23:22 17 were discussions about Sterling Stamos investing
07:23:27 18 some of its funds in Madoff at the beginning of
07:23:30 19 Sterling Stamos, and that Madoff refused because he
07:23:33 20 didn't accept funds from -- or capital from fund of
07:23:37 21 funds. Right?

07:23:38 22 A. Yes.

07:23:39 23 Q. Okay. Did Mr. Madoff explain to you
07:23:45 24 why at that time he did not accept capital from fund
07:23:48 25 of funds?

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07:23:49 1 A. I never spoke to Mr. Madoff about
07:23:52 2 that.

07:23:52 3 Q. Okay. That's right. Mr. Katz, Saul
07:23:57 4 Katz had relayed to you that Mr. Madoff did not
07:24:00 5 accept capital from fund of funds. Is that right?

07:24:02 6 A. That was my understanding from
07:24:05 7 Mr. Katz.

07:24:05 8 Q. Okay. Did Mr. Katz explain to you
07:24:08 9 why at that time Mr. Madoff had stated that he did
07:24:12 10 not accept capital from fund of funds?

07:24:15 11 A. I don't recall his explanation.

07:24:17 12 Q. Did you ask?

07:24:19 13 A. I don't recall.

07:24:21 14 Q. Six years later in 2008 you discussed
07:24:29 15 a board meeting with Mr. Saul Katz in attendance and
07:24:33 16 Mr. Dunleavy from Merrill Lynch, where the subject
07:24:39 17 of investigating Madoff was raised by Mr. Katz.

07:24:46 18 Did Madoff's position on accepting
07:24:49 19 capital from fund of funds change during that time?
07:24:52 20 Are you familiar with that?

07:24:52 21 A. I'm not sure whether it changed or
07:24:55 22 whether we just became aware that he was accepting
07:24:59 23 capital from funds of funds, because what I do
07:25:02 24 recall is telling Saul that he had -- that we had
07:25:07 25 learned that at least two fund of funds had had

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07:25:10 1 money with Mr. Madoff.

07:25:11 2 Q. And that was one of them was
07:25:12 3 Fairfield. Right?

07:25:13 4 A. Yes.

07:25:15 5 Q. And what was the other fund?

07:25:16 6 A. I believe it was Kingate.

07:25:19 7 Q. Kingate. And did Mr. Katz --

07:25:22 8 A. I apologize, and I also believe it
07:25:24 9 was Tremont. It might have been three.

07:25:26 10 Q. Did Mr. Katz ever explain to you why
07:25:30 11 Madoff accepted capital from Fairfield, Tremont and
07:25:34 12 Kingate and not from Sterling Stamos?

07:25:37 13 A. No, I can't recall that, him
07:25:39 14 explaining that.

07:25:41 15 Q. I know it seems like so long ago, but
07:25:46 16 this morning we first discussed the fact that you're
07:25:50 17 the chair of the investment advisory board for Major
07:25:54 18 League Baseball.

07:25:55 19 A. Yes.

07:25:55 20 Q. Did there ever come a time when there
07:25:59 21 was any discussion with the board as to whether
07:26:05 22 Major League Baseball should invest with Madoff?

07:26:09 23 A. With Mr. Madoff?

07:26:10 24 Q. Yes.

07:26:11 25 A. Not to my recollection.

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07:26:12 1 Q. Okay. You also testified that --
07:26:16 2 well, let me strike that.

07:26:18 3 You're also on the board of
07:26:20 4 Stanford's -- I think Stanford's hospital investment
07:26:23 5 advisory board?

07:26:24 6 A. Stanford Hospital University and
07:26:27 7 Clinic's investment committee.

07:26:27 8 Q. Investment committee, thank you. And
07:26:31 9 you're the chair. Right?

07:26:32 10 A. Yes.

07:26:32 11 Q. Okay. Was there ever a discussion
07:26:37 12 while you have been chair of that committee as to
07:26:40 13 the possibility of investing with Madoff?

07:26:42 14 A. Not to my recollection.

07:26:44 15 Q. Are you or have you ever been on the
07:26:50 16 board of North Shore Long Island Jewish?

07:26:54 17 A. I've never served on the board of
07:26:56 18 that institution.

07:26:58 19 Q. Did you -- did you ever attend any
07:27:01 20 board meetings for that institution?

07:27:03 21 A. Yes.

07:27:03 22 Q. Okay. And what was the time frame as
07:27:06 23 to when you attended these board meetings for Long
07:27:09 24 Island Jewish?

07:27:10 25 A. I recall attending board meetings

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07:27:12 1 when I served as a consultant to North Shore
07:27:15 2 University Hospital and to North Shore Long Island
07:27:18 3 Jewish.

07:27:18 4 Q. And this is in the '94 to '97 time
07:27:21 5 frame?

07:27:21 6 A. I believe it was '94 to '97, '8 or
07:27:25 7 '9.

07:27:25 8 Q. Okay. During any of those board
07:27:27 9 meetings that you attended for Long Island Jewish
07:27:30 10 was the subject of their investment with Madoff ever
07:27:35 11 discussed?

07:27:36 12 A. I don't recall hearing those
07:27:38 13 conversations.

07:27:40 14 Q. Do you know that they -- that Long
07:27:43 15 Island Jewish was -- had an investment with Madoff?

07:27:45 16 A. I believe they did.

07:27:48 17 Q. And why do you believe they did?

07:27:50 18 A. Because I believe Saul Katz told me
07:27:53 19 that they did.

07:27:54 20 Q. With respect to Long Island Jewish's
07:27:59 21 Madoff investment, what else did Saul Katz tell you
07:28:02 22 about that investment?

07:28:03 23 A. I don't recall him telling me
07:28:04 24 anything else about that investment.

07:28:05 25 Q. Other than the fact that they had

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07:28:10 1 one?

07:28:10 2 A. And that it was -- it was a
07:28:12 3 possibility of us -- for them to invest with us.
07:28:15 4 Again, I think that was the nature of the
07:28:16 5 discussion.

07:28:17 6 Q. Okay. Did Long Island Jewish ever
07:28:21 7 invest with Sterling Stamos?

07:28:23 8 A. I don't recall whether they ever made
07:28:25 9 the decision to invest with us. I do recall that
07:28:29 10 they considered investing with us, but I don't
07:28:31 11 recall whether they actually made the investment. I
07:28:37 12 don't believe so.

07:28:37 13 Q. And was one of the reasons why they
07:28:42 14 were considering investing with Sterling Stamos was
07:28:45 15 to diversify from Madoff?

07:28:47 16 MR. GOUDISS: I object. Go ahead.

07:28:49 17 A. I don't know what their rationale was
07:28:51 18 for why they were seeking to invest with us. I was
07:28:56 19 seeking their business.

07:28:57 20 Q. What rationale did they express to
07:29:00 21 you?

07:29:00 22 MR. GOUDISS: Object. Go ahead.

07:29:02 23 A. I don't recall what rationale they
07:29:05 24 expressed to me. It may have been the reverse.

07:29:07 25 Q. I'm sorry. It may have been the

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07:29:08 1 reverse?

07:29:08 2 A. It may have been our asking them to
07:29:10 3 consider investing with us.

07:29:12 4 MR. BOHORQUEZ: All right. Why don't
07:29:13 5 we take a quick break, make sure that we can finish
07:29:17 6 this up, but I think just maybe five minutes and
07:29:20 7 then we can wrap this up.

07:29:22 8 THE VIDEOGRAPHER: Going off the
07:29:23 9 record, the time is 7:29.

07:29:26 10 (Brief recess.)

07:37:13 11 THE VIDEOGRAPHER: We are back on the
07:37:21 12 record. The time is 7:37.

07:37:25 13 BY MR. BOHORQUEZ:

07:37:28 14 Q. Mr. Stamos, when did Mr. Chachra
07:37:31 15 leave Sterling Stamos?

07:37:36 16 A. I believe it was April 1st of this
07:37:41 17 year.

07:37:42 18 Q. And why did he leave Sterling Stamos?

07:37:45 19 A. What Mr. Chachra expressed to me was
07:37:53 20 a couple of factors. Number one, he wanted an
07:37:59 21 opportunity to be the lead investor of a group and
07:38:06 22 that he wouldn't have that opportunity with our firm
07:38:09 23 for several years because I intended to stay in that
07:38:14 24 position. And second, that the opportunity that he
07:38:18 25 had was one that would allow him to stay closer to

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07:38:23 1 his family and spend more time without travel with
07:38:27 2 his newborn -- or newly born daughter and wife.

07:38:33 3 Q. And did he express any other reasons
07:38:35 4 why he left other than those two?

07:38:39 5 A. It was a long conversation and very
07:38:41 6 cordial conversation about those topics that went on
07:38:47 7 for quite some time.

07:38:50 8 Q. Where -- where is he now?

07:38:51 9 A. He is now at Allen & Company.

07:38:53 10 Q. And what is Allen & Company?

07:38:54 11 A. It is an investment bank and I
07:38:58 12 believe he's managing the family office -- or the
07:39:00 13 investment office.

07:39:01 14 Q. What did you do to prepare for your
07:39:07 15 deposition today?

07:39:09 16 A. I recall at your request, or at the
07:39:16 17 request of the subpoena, collecting whatever
07:39:18 18 documents I could find, sending them to my -- our
07:39:23 19 attorneys and had -- and they did the same and they
07:39:27 20 shared those documents with me in aggregate and
07:39:31 21 reviewed those documents with me.

07:39:32 22 Q. And how many times did you meet with
07:39:35 23 your counsel in preparation for today's deposition?

07:39:38 24 A. I recall having two video conferences
07:39:42 25 and one in-person meeting.

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07:39:44 1 Q. And when were the video conferences?

07:39:48 2 A. I believe that one was a couple of
07:39:50 3 weeks ago and one may have been the week prior to
07:39:53 4 that.

07:39:53 5 Q. And when was the in-person meeting?

07:39:56 6 A. Yesterday.

07:39:57 7 Q. The first video conference, who was
07:39:59 8 in attendance over video?

07:40:01 9 A. Over video conference I recall Tammy
07:40:05 10 being in attendance and one of her colleagues.

07:40:09 11 Q. Anyone else?

07:40:13 12 A. I don't recall anybody else being in
07:40:15 13 those meetings.

07:40:15 14 Q. And would that apply to the second
07:40:17 15 video conference as well?

07:40:19 16 A. I believe it was the same attendees.

07:40:22 17 Q. Okay. And with respect to the
07:40:23 18 in-person meeting yesterday who was in attendance?

07:40:26 19 A. I recall meeting yesterday in the
07:40:29 20 morning I believe it was with Tammy and with one of
07:40:34 21 her colleagues, and in the afternoon I recall Tammy
07:40:38 22 being present, oh, Jared was present as well in that
07:40:42 23 meeting, and I think Jared may have been present in
07:40:45 24 the video conferences as well, I apologize. I think
07:40:49 25 Jared was present in the video conferences as well.

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07:40:52 1 Q. Okay. And anyone else at the
07:40:53 2 in-person meeting?

07:40:54 3 A. And Alan for the afternoon and early
07:40:58 4 evening yesterday.

07:40:59 5 Q. Did you have any discussions with
07:41:01 6 anyone at Sterling within the last few months
07:41:09 7 concerning the Madoff investigation?

07:41:10 8 A. I have no recollection of any
07:41:11 9 conversations with Sterling in the last few months
07:41:14 10 about the Madoff situation.

07:41:17 11 Q. Do you know if your counsel had any
07:41:21 12 meetings with Davis Polk with respect to your
07:41:27 13 subpoena or your deposition?

07:41:28 14 A. I don't know if they had meetings or
07:41:30 15 conversations with Davis Polk, but I believe that
07:41:36 16 that -- that they had communications with them in
07:41:41 17 terms of documents, but I'm not sure of that.

07:41:52 18 MR. BOHORQUEZ: Okay. I think we
07:41:54 19 have completed our examination. Thank you for your
07:41:57 20 time, Mr. Stamos. We very much appreciate it.

07:42:00 21 THE WITNESS: Thank you very much.

07:42:00 22 MR. GOUDISS: Thank you. And just
07:42:01 23 for the record, we, obviously, designate the
07:42:03 24 transcript and the exhibits as confidential within
07:42:05 25 the meaning of the Protective Order. And we thank

07:42:08 1 you very much for your time.

07:42:10 2 THE VIDEOGRAPHER: Going off the

07:42:11 3 record, the time is 7:42.

07:42:15 4 (Deposition concluded 7:42 p.m.)

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JURAT

I, PETER S. STAMOS, do hereby certify that I have read the foregoing transcript of my testimony taken on August 19, 2010, and have signed it subject to the following changes:

PAGE	LINE	CORRECTION
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PETER S. STAMOS

Sworn and subscribed to before me on this day of

NOTARY PUBLIC: _____

C E R T I F I C A T E

1
2
3 I, NANCY C. BENDISH, a Certified Court
4 Reporter and Notary Public of the States of New
5 Jersey and New York, do hereby certify that prior to
6 the commencement of the examination the witness was
7 sworn by me to testify the truth, the whole truth
8 and nothing but the truth.

9 I DO FURTHER CERTIFY that the
10 foregoing is a true and accurate transcript of the
11 testimony as taken stenographically by and before me
12 at the time, place, and on the date hereinbefore set
13 forth.

14 I DO FURTHER CERTIFY that I am neither
15 a relative nor employee nor attorney nor counsel of
16 any party in this action and that I am neither a
17 relative nor employee of such attorney or counsel,
18 and that I am not financially interested in the
19 event nor outcome of this action.

20
21
22 Notary Public of the State of New Jersey
23 Certificate No. XI00836
24 My commission expires May 18, 2011
25

C E R T I F I C A T E

I, MONIQUE VOUTHOURIS, a Notary Public and Certified Court Reporter of the State of New Jersey, License No. X100834, do hereby certify that prior to the commencement of the examination the witness was duly sworn by me to testify the truth, the whole truth, and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Notary Public of the State of New Jersey
My Commission expires April 8, 2014